12 Pennsylvania Ave.
Long Beach, New York
April 24, 1964

Mr. Morton Friedman, Attorney
112-10 Farmers Blvd.
St. Albans 12, New York

Dear Mr. Friedman:

On Wednesday, April 22, 1964, at approximately 10:30 a.m., I witnessed Mr. Andy Young's being taken into custody by about six men in rain-coats, purporting to be police officers at the Florida Pavillion at the World's Fair during the picketing there on the opening day.

Because I was advised by Mr. Lincoln Lynch, just this morning, that you were likely to be representing Mr. Brown as counsel at his trial, I feel obliged to report a number of details I witnessed which may be relevant to that trial.

First, it may be appropriate to note that prior to the morning of April 22, I had never, to my knowledge seen Mr. Andy Brown, nor had I participated in any activity of C.O.R.E. aside from giving annual token contributions to the National C.O.R.E. for membership and moral support. Nor had I, previous to that same morning seen any of the purported officers involved, to the best of my knowledge. I had observed Mr. Brown for perhaps half an hour before the Florida Governor Bryant spoke at the official opening of the Florida Pavillion, peacefully looking at the Florida exhibits along with perhaps two to three hundred other visitors, members of the press, etc. There was no hint of any disturbance by anyone until a few minutes after the peaceful and orderly picketing began in the outer court between two of the main buildings of the Florida pavillion. I emphasize the peaceful and orderly nature of the picketing, as this prevailed as long as I was there, at least, which was some time after noon.

A few minutes after the picketing began, Mr. Brown climbed up the heavy steel girding onto the flat steel roof joining the central building to the one just south of it, beside which the pickets were circling in such a way as not to block entrance or egress. Immediately a few men rushed up onto the roof and grappled with Mr. Brown, and brought him down within 3 to 5 minutes. A number of onlookers shouted: "Drop him down on his head!" Mr. Brown was dragged, with conspicuously unnecessary violence across the court, ~~and across two streets~~ and into a large Greyhound Bus. Midway across the court, he called out for his shoe, but was this request was ignored by the officers, despite the obvious presence of many more of them around than were in any way involved with Mr. Brown. I thereupon took the shoe from another negro man, assuming that being "white" I might have a better chance of getting it to Mr. Brown, in view of the disrespect being shown him by the purported officers. The latter repeatedly blocked my entrance to the bus, but I managed to get in past them, merely insisting that I was going to give the shoe to the man. I succeeded in doing so, and, despite other protesting by the purported officers, managed to get Mr. Brown's name and address from him.

I have used the term, "purported officers," because they were not clearly identified as such over their raincoats. And as one of them asked, quite rudely, who I was [illegible], as I was trying to get on the bus to give it. [illegible] I answered that I was simply a citizen of New York, and would he please identify himself. He answered that he was an officer, and showed me a small pin that was not recognizable to me as representing the police. Then he showed me a quick glimpse of an officer badge, but too quick for me to identify his number. Other colleagues of his called out that he did not need to identify himself to me. There that matter ended. However, I did clearly overhear the ensuing conversation with another of these men, on the question of the charge that would be made against Mr. Brown, saying they would have to charge him with something. One of them offered, quite casually, that his [illegible] had been hit. There was no apparent [illegible]. They answered, [illegible] with assaulting an officer?" This [illegible] agreed to by him.

I emphasize the obvious humor which the purported officers took in lighting upon this charge v.s. Mr. Brown, for I observed numerou other instances that afternoon at the New York State Pavillion, wherein officers indicated that their rough handling of limp demonstrators was, somehow, amusing to them. The manner of selecting the charge v.s. Mr. Brown could not have been more conspicuously "trumped up," except that the officers apparently did not know they were being overheard.

Referring again to the prolonged carrying and escorting of demonstrators into the Police vans at the New York Pavillion, I was impressed by how consistently the Police maintained large numbers of their uniformed officers in lines apparently exclusively to hide their actions from the numerous cameras, press, and public at large, whom the Police continuously pushed back, far beyond their required operating space, apparently to hide what they were doing. What they were doing included needlessly violent bumping of the backs of some of the demonstrators against the edge of the steel floor of the vans, despite the conspicuous fact that all of the many demonstrators I observed offered no resistance whatever. I believe that this reference to other episodes of that day than that immediately involving Mr. Young may be relevant inasmuch as his involvement was not merely an isolated event, but clearly within the context of the considerable excitement relating to the opening day of the Fair, expanded far beyond Mr. Young's responsibility to involve the hundreds of extra police, newsmen, etc.

Finally, I do not intend herein to defend Mr. Young's action in climbing up on the flat steel roof, though it may be noted that about an hour later, I saw two "WHITE" casually walking along the same roof quite unmolested. Of course, they may have had proper business there. And, assuming that Mr. Young's activity there was out of order, that does not justify his being charged for assaulting an officer when, conspicuously he had not done so. Indeed, it may be argued that it was the officers who perpetrated undue violence, if not indeed assault, v.s. Mr. Young, even if his own prior actions were disorderly. Or does one relatively minor wrong justify a greater wrong when the latter is done in the name of the law?

Finally, I do not believe that any fair hearing for Mr. Young, or anyone else involved in the demonstrations at the Fair, can be viewed outside the context of the fact that what they were demonstrating about was the admitted wrongs of segregation which our society, despite its democratic legal structure and philosophy, continues to perpetrate v.s. the Negroes, their fellow Negroes, and consequently v.s. all of America. Yes, I would say even if Young was guilty of disorderly conduct, but that the context was unfavorably more disorderly than that which he was demonstrating against, in short an infinitely more blatant disorder in our society.

(Where I have in several places where I used the name Mr. Brown, I intended Mr. Young.)

I hope that this letter may serve to promote justice, not alone for Mr. Young, but for our American society. Please advise me if there is anything else I may do to this end.

Sincerely,

Theodore M. Hilmer

Theodore M. Hilmer

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Finally, I do not believe that any fair hearing for Mr. Young, or anyone else involved in the demonstrations at the Fair, can be viewed outside the context of the fact that what they were demonstrating about was the admitted wrongs of segregation which our society, despite its democratic legal structure and philosophy, continue to perpetrate v.s. the Negroes, their fellow Negroes, and consequently v.s. all of America. Yes, I would say Mr. Young was guilty of disorderly conduct, but that his conduct was profoundly less disorderly than that which he was demonstrating against in order to correct that more basic disorder in our society.

(CORRECTION: In several cases where I used the name Mr. Brown, I intended Mr. Young.)

I hope that this letter may serve to promote justice, not alone for Mr. Young, but for our American society. Please advise me if there is anything else I may do to this end.

Sincerely,

Theodore M. Hiltner

Theodore M. Hiltner

Arthur Oesterreicher / 1075 Alicia Avenue Teaneck, New Jersey

April 27, 1964

APR 29 1964

Mr. Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York, New York

Dear Mr. Rachlin:

You may recall that I was one of the arrested CORE demonstrators involved in the second action at the Schaefer World's Fair Pavilion on April 22. We spoke on the phone last week and I promised to send you a written report of my recollections.

The second Schaeffer action started as a picket line of no more than 12 people. I was project leader. The line included Joan O'Gorman, Martin and Alice Jacobs, Winifred Farrar and William Kenny, all of Bergen County CORE, among the original demonstrators. (All except Kenny, who left early, were subsequently jailed.)

The line was formed after Norman Hill informed me that there had been a risk-of-arrest action at Schaeffer. When we arrived, at about 12:15 p.m., the first Schaeffer action had just been broken up and there was no CORE presence at the pavillion.

At first we distributed leaflets, then we formed a picket line. A pinkerton captain, wearing double silver bars--red-faced, not particularly young, perhaps grey-haired--immediately approached me. He recited a formula: " You will be permitted to demonstrate peacefully so long as you do not interfere with the ingress and egress of Fair visitors." To this I agreed.

The crowd around us grew denser and more hostile. Several drunks, including Schaefer employees in Scotch kilts, attempted to inteffere with the demonstration.

Fearing the possibility of violence, I asked several CORE people to seek reinforcements. These arrived from the Missouri pavillion at perhaps 12:45. (Thereafter there were several project leaders.)

The much enlarged line continued to demonstrate peacefully. It became encircled by police, who squeezed us so tightly as to immobilize us. Half the line then sat down. The remaining half (myself and the Bergen CORE group among them) kept the line going until physically removed at about 1:10 by pinkertons.

We did not resist this removal, though at no time had we been told to desist from picketing; at no time were we told we were under arrest, or warned of the risk of arrest; and, once encircled, it was impossible for those who may have wished to do so to leave the line.

Arthur Oesterreicher / 1075 Alicia Avenue Teaneck, New Jersey

We were detained in the pinkerton compound for many hours with questioning, without being informed of the charges against us, and without the right to legal counsel. When these rights were requested, we were ignored. At no point was I informed of the charges against me. Arresting officers were selected at random, and charges eventually filed were with no relation to the degree or type of participation of the prisoner.

I may addthat at no time did the picket line obstruct ingress or egress to the Schaeffer pavillion. A solid phalanx of pinkertons stood at all times between the line and the pavillion.

The pinkerton captain who authorized the demonstration is a man I believe I could pick out of a line up. Furthermore, he could be identified by name; there was no other captain, I believe, assigned to that post at 12:15 p.m.

During our detention at Queens many prisoners were denied food, the right to make a phone call and their right to bail or counsel. Many prisoners were not informed that bail had been posted for them. Many (I for one) were not fed until arrival at Hart's Island at 7 a.m., some 17 hours after being seized. We slept in Queens on stone floors, twelve to a cell designed for two.

As regards questioning, a number of prisoners were never asked any questions by the pinkertons or New York police. As I insisted on demanding the name of the arresting officer, the nature of the charges against me and legal counsel, A pinkerton lieutenant in charge of the compound (number 10 badge) refused refpeatedly to answer these questions, in complete violation of my constitutional rights.

The arresting officer in my case was Katz, a white pinkerton. The pinkerton who helped me into the pinkerton truck--whose name I do not remember--was a moustached Negro. Yet Katz, whom I had never seen before, was the arresting officer in the case. Those of us who did not sit on the ground were charged with identical offenses as those who did.

If any of these recollections are of value to CORE I will be glad to assist in the defense against these illegal and cruel detentions, in any which which is possible.

I can bereached during business hours at 201 LO 7-4441 and at home, 201 TE 3-0545.

Sincerely yours,

Arthur Oesterreicher

2170 University Avenue
Bronx 53, New York
April 28, 1964

Mr. Carl Rachlin
Congress of Racial Equality
38 Park Row
New York, New York

APR 29 1964

Dear Mr. Rachlin:

I am writing on behalf of Florence Miller as well as myself. We were both arrested at the Schaefer Pavilion at the Fair on April 22nd and later informed, by CORE people at the Women's House of Detention, that you would be representing us at our trial on May 6th.

If this is so, would you be good enough to confirm it and make an appointment, at your convenience, for us to discuss our cases with you. Both Mrs. Miller and I are free during the daytime, and I will let her know when I hear from you. I can be reached at the above address or at SE-3-1916.

Cordially,

Toni Robinson

Toni Robinson

MAY 1 1964

One Wall St
April 30

Carl Rachlin, Esq
CORE
38 Park Row
New York, N.Y. Re: World's Fair arrests

Dear Carl:

I enclose the names of those represented at the arraignment by me and Joe Robison, and a third unknown. These records are a mess, but they are all I have.

John Burns, in this office, would like to handle a trial of one of those arrested. He is exceptionally able, and can supply a friend, Seth Shapiro, also an attorney. Call John and give him a little warning so he can talk to his client. I urge you most seriously to use him - I think he is great.

I will be out of town this coming week, but I would like to try one myself when I come back.

Regards, Paul

Name	Lawyer	Crime	Bail	Trial Date
E. Keary	Cherigny	1. Disturbance 2. Resisting 3. Tvesspass (§ 240 36 PL)	All $500 ea.	May 15
G. Budabin				
L. Siegel	D		Pearson Weingeist Opatashu parroled (16 years old)	
M. Shatkin				
M. Bookchin	1	1		
I. Roodenko				
R. Gabrielski	T	T		
R. Neavis				
E. Pearson	T	T		
K. Weingeist				
D. Opatashu		0		
I. Davis	0			
E. Brown				
M. Walker				
K. Abel				

Arraigned together. Pinkerton arrest

A. Adkins E. Roberts V. Gripper B. Brown P. Corbett L. Hobbes L. Jenkins E. Eblar L. Plummer P. Stevens R. Gordon H. Doctor P. Dul J. Clark M. Brown F. Roberson K. Cohen	Chevigny	Disturbing Resisting	$500 exc Colvin Gordon paroled (under 16)	May 25

all arraigned together. They were demonstrating, but did not sit down or resist arrest. Pinkerton arrest

C. Riddick Starzynsky E. Lerner K. Kehoe Terestman N. Wagner C. Lawson I. Richards B. Rushing J. Katz D. Mora L. Rushing McLaughlin E. Kerins	Chevigny	Disturbance Resisting	$500 etc Lerner Riddick Wagner Terestman all paroled (under) 16	May 12

arraigned together. Pinkerton arrest

Helen Reyes	Lawyer Unbundon (sheets enclosed)	Disturbing	$500	May 7
Michael Kinsler		Disturbing Resisting	$500	may 7
Dular Glover				Paroled
Janet Rose		Disturbing (in jail)		
Frances Taylor		Not marked		
Sanders Taylor		Not marked		
Rosalind Weinstock		Not marked		
Joe Norris		Not marked		
Beth Mitchell		Not marked		
Jeff Mitchell		Not marked		
Robt. Miller		Not marked		
Dorothy Fielding		Not marked		
Pat Walker		Not marked		
Andrew Jackson		Not marked		

Jim Coatscoath apparently held in contempt

One Wall St.
April 30

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N.Y.

Re: World's Fair arrests

Dear Carl:

I am sending you the names of those whom I represented, and sheets I got from Joe Robison for others. I am also sending you names of people I know who would like to represent someone at trial (I will, myself, if I am not swamped at the time)

Lawyers:

J.M. Burns III - this office

Seth Shapiro - a friend of Burns' who would like to defend a sit-in.

If you would give them a little warning, so they could see the client, all will go well. Call them anytime. I will be out of town next week.

Galmikias	Robison	Disturbing	500 &	May 4
Epstein		Relating	5 Cards	
Mapp		(apparently)		
Lloyd				
(?)				
(?)				
Dixon				
Kalimitchis				
Peters				
J. Dixon				
Mort Rubin				
Furmann				

Morin Sherman Eisenberg Tournour Harris	Robison	Disturbance Resisting (apparently)	$500	May 11

arraigned together

---

horia Davis Thomas Kahn Hillel Barzin James Peck Merla Bell	Robison	Disturbance Resisting (apparently)	$500 & $50 each	May 18

arraigned together

James Halpern Sharon Aeolus E.G. Green	Robison	{Disturbance Blocking subway {Disturbance Blocking subway Resisting {Disturbance Blocking subway	500 & 50 each	May 11

arraigned together

Val

World Fair

Ho-8-2299

111-04 204th Street
St. Albans 12, New York
April 30, 1964

National CORE
38 Park Row
New York 10038, New York

Dear Mr. Hill:

Would you be so kind as to check the enclosed list of names and let me know the dates of the trials. Also enclosed is a list of the participants of the Worlds Fair demonstration. You may keep this copy for your records.

Very truly yours,

Mrs. Dorothy Conway

Arrested:

1. Claudia Brown May 28
2. Thelma Dantzler May 26
3. Dorothy Conway May 7
4. Alberta Wright May 28
5. Christine Palmer May 21
6. Gula Glover
7. Bob Jaffe May 6
8. Mark Brody May 4

Participants:

1. Barbara Zeluck
2. Grace Minns
3. Rosalie Taylor
4. David De Reinzio
5. Maxine Williams
6. B.F. Williams
7. Larry Hochman
8. Mrs. Minnow
9. Emile Hyman
10. Bob Hyman
11. Richard Johnson
12. Mildred Mills

These persons were arrested from the New York City Pavilion.

Queens CORE
189-22 Keesville Avenue
St. Albans New York 11412

World's Fair

MAY - 4 REC'D

Pinkerton

LAW OFFICES
SCHIFFER & COHEN

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

BARRY LEE COHEN
GEORGE SCHIFFER

May 1, 1964

Mr. Robert McCann,
Department of State,
Division of Licenses,
270 Broadway,
New York, N.Y. 1007

Dear Mr. McCann:

Further to our conversation of last Wednesday, this is to request that your Division investigate the conduct of the Pinkerton operators at the World's Fair on April 22, 1964, with a view to determine whether any of their conduct in regard to civil rights demonstrators was of such character as to require disciplinary action by your Division.

You will recall that on April 22, in excess of 300 civil rights demonstrators were arrested within the grounds of the World's Fair. These arrests were carried out by Pinkertons purporting to act as peace officers. Following the arrest, the demonstrators were detained on the Fair grounds by the Pinkertons for periods ranging up to approximately ten hours.

Further, a substantial number of persons was arrested while marching peacefully with signs in front of specific pavilions of the Fair. We consider that these persons were engaged in the exercise of their constitutional rights.

I have further been informed that persons employed by the Pinkertons monitored or intercepted, and divulged communications between demonstrators over citizens band radio.

Since the Pinkerton organization and its employees

COPY

are licensed by your Division, we request you to investigate and to determine whether, in the light of the conduct described and other conduct which your investigation may disclose, the persons and organization holding the licenses have violated the rules and regulations of your Division.

Sincerely yours,

George Schiffer

bcc: Carl Rachlin, Esq.

COPY

W.F.

MAY 7 1964

May 4, 1964. (1)

Dear Mr Rachlin

This is in reference to the telephone conversation we had concerning the circumstances of my arrest at the Worlds Fair, at which time my finger was broken.

I was demonstrating at the Schaffer Pavillion & was on top of the bar along with about 20 others. The Pinkerton Police pulled me to the ground by yanking on my legs. At no time was I given the option of descending voluntarily. I hit the ground in a jumble of limbs & bodies & was promptly lifted & half dragged

half carried to the paddy wagon. Again, I was not given the option of walking. While being transported I was dragged across a bush. I was then literally hurled into the paddy wagon. Soon after getting to my feet I noticed a pain in my finger. This was about 11 30 A.M. on Wednesday. & at about 1 30 or 2 A.M. Thursday morning, after arriving at Hart Island I was searched & fingerprinted & passed before a prison physician. I complained that the 4th finger on my right hand was swollen, very painful & very black & blue. He gazed at it momentarily, inscribed some details on a yellow form & told me to report to an orderly who

was a few feet away. The latter proved to be (I believe) a prisoner in a white coat. He differed from the doctor in that the doctor was a non-prisoner in a non-white coat. The orderly offered me Iodine and/or aspirin. I declined. I was released at about 4:30 A.M. on Friday. I returned home & then went to my doctor who X-rayed my finger & reported that the middle portion on the finger was fractured. I have been wearing a splint since then & have been seriously inconvenienced in my work. I feel certain that if the Pinkerton men had taken the slightest pains in handling me during the arrest, this injury would

not have occurred. I would also like to make some other points:

1) I asked repeatedly for a call to be made to my wife who was home with our child. I believe I was entitled to this privelage. A message was finally taken at about 2 A.M. Thursday at Hart Island and again later on Thursday. No call was ever received by my wife.

2) While being detained in the pens at the warden's pair, assignment of an arresting officer was made on a purely arbitrary basis. I believe this is true of almost all those arrested with me. They simply said: "A, B, C, D, etc are assigned to officer X."

3) While detained in the Queens Court before our arraignment, 24 of us were herded into one small cell (about 6 X 10 feet) for a period of about 5 hours. When we complained the guard closed the windows & switched off the ~~fans~~ fans.

There was not even room for all of us to sit. We were given food for the first time at about 8:30 Wednesday evening, although many of us hadn't eaten since the night before. The meal consisted of spaghetti soup + bread. We were given no utensils.

4) After the arraignment we were searched & a small pocket-knife (the blade was about 1½" long) was confiscated. The policeman flatly refused to give me a receipt. He walked

away quickly & I couldn't get his number.

I hope these details will be of some use.

Sincerely

David Dunbar.

a national organization with affiliated local groups working

CONGRESS OF CORE RACIAL EQUALITY

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

James Farmer
national director
Richard Haley
associate
Gordon Carey
assistant
Carl Rachlin, Esq.
general counsel

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5/4/64

MEMO

TO: CARL RACHLIN
FROM: MIMI HERNANDEZ
RE: ARRESTEES AT SCHAEFER

This is a list of people arrested at the Schaefer Pavilion. It was brought in by James Statman, from Hunter College, Bronx Campus. These people were not asked to leave.

Jay Dravich---Hunter College
Paul Feingold----"
James Statman----"
Marjorie Ziefert-NYU
Steven Perlmutter--Hunter
Gerald Tenney------"
Daniel Chernofsky---"
Dena Weisman-----Queens
John Fisher -----CCNY
Arthur Oestreicher---Bergen County
Barbara Westerfield---St. Louis

All of these people are listed on the papers we have from the Court House.

Mimi

File Weld, Jan

LAW OFFICES
SCHIFFER & COHEN

MAY - 8 REC'D

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

BARRY LEE COHEN
GEORGE SCHIFFER

May 7, 1964

The Honorable Frank D. O'Connor
District Attorney
Queens County
General Court Building
126-05 Hoover Avenue
Kew Gardens, New York 11415

Dear Mr. O'Connor:

A memorandum concerning some of the legal questions implicit in the arrest of demonstrators at the World's Fair is in preparation. I thought it would be useful to put in writing for your consideration in the interim some of the more general ideas which we consider applicable.

The legal and moral basis of the civil rights movement, in its simplest terms, is the desire, indeed, the demand that the law be enforced. In those situations where it is thought that a change in the law is required, the movement as a whole and particularly the NAACP and Urban League have employed judicial and legislative approaches of the most ordinary kind. Significant as these activities are, they are secondary to the fundamental approach of CORE and the other groups to secure obedience to existing law and recognition of existing legal rights. Virtually all demonstration activity can be directly related to this objective.

Demonstrations, whatever their form, have become necessary in New York because the authorities which are charged with executing the laws have failed in their responsibility. This failure has been the result of deliberate policy in some sectors. In other sectors, lack of understanding, questions as to the proper allocation of funds and other problems are often responsible. The present situation is that the continued failure to observe the law in a way detrimental to more than one-fifth of New York's population cannot be countenanced. The demonstrations seek to impress upon those public officials charged with enforcing the law the necessity for acting now.

SCHIFFER & COHEN

The initial reaction of police and prosecutors has been that the demonstrators are law violators who ought to be punished even though their objectives may be altruistic and even socially desirable. My point is that this reaction is erroneous and prejudicial to the good of the community. The moral forces of the community have the duty to enforce the law against those who discriminate. Demonstrations should be recognized as favoring public order.

The effect of this police and prosecution reaction encourages continued law violations by those against whom the demonstrations are directed. The state laws protecting civil rights stand virtually unenforced, open and notorious violations go unprosecuted and unpunished. We consider it of the first importance that public authorities charged with law enforcement treat this problem objectively. If, indeed, demonstrators violate the law, they may expect to be arrested. However, active steps to enforce the law should be taken against the evils which cause the demonstrations. The moral and persuasive force of such action would be enormous. More, such action is essential to show that Government is on the side of law and order and will no longer condone the historic lawlessness of those against whom the demonstrations are directed.

The demonstrations at the World's Fair are in aid to Government process. Certainly, the opening day demonstrations were neither intended nor carried out as a defiance of law and order. Fundamentally lawless, however, was the response of the Fair.

The World's Fair 1964-1965 Corporation has secured a series of local or private bills which on their surface create an entity above the law. The Corporation is relieved from obedience to the administrative code of the City of New York and to various other applicable laws. The Corporation is empowered to employ persons who may then be sworn in as peace officers. The Corporation has in fact constructed and used its own prisons.

This arrangement is inherently repugnant to both the Federal and State Constitutions. Our law does not favor private jurisdictions or special privileges. Article 3, Section 17, of

MR. SCHILLER & SCHIFFER & COHEN

the New York Constitution, goes so far as to deprive the Legislature of the power to enact any private, immunity or franchise, which the Fair statutes most clearly create.

Assuming that the Legislature did have the power to grant certain rights to the Corporation, it would certainly be the case that the Corporation would be bound most strictly by the limits of the grant. This is a fundamental rule of interpretation with regard to monopolies and other grants running against the State. When, therefore, the Legislature purported to grant to the Fair the right to have employees who could be sworn in as peace officers, the Legislature in no way granted the Corporation the privilege to secure the services of an independant contractor, Pinkerton, whose uncontrolled employees would be peace officers. Yet this is what in fact was done. The conduct of the Fair and the Pinkertons on opening day could not have been intended by the Legislature. Certainly, this conduct illustrates all of the objections to such private jurisdictions.

The Pinkertons, except for the few former FBI and policement at the top, have apparently very little police experience. Many are very young. Their training appears to have been quite limited. They are unfamiliar with the laws of New York and of the City. They are not like New York City policemen, essentially responsible people making a career of law enforcement. These Pinkertons simply follow orders, relying on the power and money of the Pinkerton organization of the Fair to get them out of trouble if they should be acting wrongly. It was the Pinkerton organization which allowed these men to carry billy clubs. It was also the Pinkerton organization which secured a fire truck carrying a high pressure hose for use against the demonstrators.

Every single demonstrator purchased a ticket. These demonstrators were entitled to the protection of their rights. By setting the Pinkertons on them, the Fair violated their rights, or at the very least, was careless of the rights of the demonstrators. It seems quite apparent now, as beforehand, that if the Fair had made no arrests, the peaceful demonstrations would have concluded peacefully and the Fair would have suffered nothing by allowing them to proceed.

MR. SCHIFFER & COHEN

Further, the demonstrations were not directed against the Fair but against specific exhibiters. As a result, the Fair should at least have inquired whether the demonstrations had a foundation. In fact, the Pinkertons acted upon instructions simply assuming that the demonstrators had no right to be present, despite their tickets, and were acting as law violators, despite their entirely proper purposes.

The arrest procedure was utilized as a punitive measure. More than that, the demonstrators were detained on the Fairgrounds for unreasonable periods of time, ranging to approximately 10 hours, entirely without warrant. If the Pinkertons indeed believed that the conduct of the demonstrators was beyond the proprieties of the Fair, the Pinkertons could have done what private police do in baseball parks, department stores and other public places, or places open to the public. They could have escorted the demonstrators whose activities they found objectionable outside the Fair, after refunding the price of admission. In effect, the demonstrators were treated more harshly because they were exercising their constitutional rights than a really disorderly citizen would have been. By proceeding immediately to arrest, the Pinkertons demonstrated their own bad faith and there desire to act in a punitive fashion. The Fair is now seeking to use your office to these ends.

The arrests on opening day raised a number of other issues of constitutionality and statutory interpretation, which issues will be dealt with in the memorandum.

The charges made against the demonstrators, with few exceptions, were that they violated Section 2036, 2092, 722, or 1851 of the Penal Law.

Fundamentally, we urge that the Fair is public property for all purposes relevant to these cases. In each particular case, there was also constitutionally protected conduct.

The Section 2036 claim, Intrusion on Real Property, is quite plainly unfounded in the light of Section 3 of Chapter 892 and the Constitution. The 2036 charges must also be considered in terms of the pavillion at which activities occurred. New York City, for example, cannot take the position that its pavillion constitutes private property.

SCHIFFER & COHEN

The fact that each demonstrator had a ticket must also be considered. These tickets were not revoked, nor were the demonstrators offered any refund.

The unlawful assembly charges under Section 2092 are adequately answered by the language of the Statute, which specifically makes it inapplicable to activities of picketing and demonstration.

As to Section 1851, initially, if the fundamental activity was lawful, then no 1851 charge can be sustained. More, it is our understanding that the 1851 charges were placed against any person carried to a police van, and, in a comparatively small number of cases, against persons who walked to the van (the latter category being probably in error.) To refuse to walk to a police van does not, in my opinion, constitute a violation of Section 1851 under any reasonable interpretation.

At the Fair, peace officers far outnumbered demonstrators wherever arrests were made. These peace officers created considerable confusion and uncertainty. There was a great deal of noise. Under the circumstance, it seems entirely out of the question that the 1851 charges be sustained.

The disorderly conduct charges, mainly under Section 722, but a few under Section 720, will prove very difficult to sustain, in my opinion. Quite aside from any question of identification (and that question is most likely to arise due to the procedures followed by the Pinkertons), it is doubtful that the elements of Section 722 can in fact be proved. If the evidence at the trial before Judge Hannah is any criterion, the People will find it very hard to make a case.

Where the demonstrators were sitting down, the people will have to prove the duration of the sitdown, the fact that a blockage occurred, the fact that the blockage was sustained for a significant period of time, the fact that a crowd of persons, other than Pinkertons, police, and newsmen, gathered, the fact that a breach of the peace was intended, or was likely, etc. It goes without saying that there was no intent to cause a breach of the peace. Nor, as the Supreme Court held in the Edwards case, can a breach of the peace have been likely in the presence of three or four policemen to every demonstrator.

All of the foregoing suggests that it is in the public interest not to prosecute. When there are reasonable grounds to believe that the prosecution will not succeed, the prosecution should not be carried forward. In the present instance, there are additional reasons against carrying forward the prosecutions. It is certainly not in the public interest to encourage the Fair, which will be with us for two years, to conduct itself like a feudal barony, contrary to the Statutes authorizing it and contrary to the civil rights of persons who visit it. Nor is it proper to create the public impression that demonstrators will automatically be prosecuted while no steps are taken to meet their lawful demands. On the contrary, every consideration of public morality favors demonstrations for law and order.

Recently, prosecution refused to proceed in 1100 cases in Durham, North Carolina. In the coming months, a great deal will depend upon the exercise and discretion by public officials in situations of great intensity. Constructive leadership by you at this time will be of inestimable value to the community as a whole.

Respectfully submitted,

George Schiffer
(signed by his secretary
in his absence)

GS:ba

bc: Carl Rachlin, Esq.
V. Coleman

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.

MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

MAY - 8 REC'D

May 7, 1964

Carl Rachlin, Esq.
165 West 46th Street
New York, N. Y. 10036

Dear Carl:

The CORE v. Clinton argument went well and we feel that the court (Tuttle, Wisdom & McCrae) is willing to accept appealability of civil rights remand orders. We must submit a further brief on one point. If we win, the whole movement will benefit and we may have broken the back of the most potent weapon the power structure has - - state court injunctions and mass prosecutions. CORE should be proud of its part in this.

As I told you, I do not expect any fee for this. As we agreed, however, I do expect my expenses which were $187.00, including air transportation, meals, taxis, etc. Since these are out-of-pocket expenses, I would appreciate a rebate as soon as possible.

Cordially,

William M. Kunstler

William M. Kunstler

WMK:bkf

W.P. File

May 7, 1964

INTER-OFFICE MEMORANDUM

TO: Carl Rachlin

FROM: Marvin Rich

RE: Bonds on Arrestees at World's Fair Demonstration

Jack Meyer has reported that there have been 20 forfeitures to date on bail bonds, which is an excessive amount. If they proceed at this rate, we could quickly go bankrupt.

We can either tighten up with the individuals or maybe make a binding arrangement with the District Attorney.

Mr. Meyer has also requested that pay him ... at least a down payment.

We are watching
W/ 20

World Fair

regulation

Demonstrations, parades, congregations, picketing or other similar acts on the Fair site are prohibited except under written permit of New York World's Fair 1964/65 Corporation. No person may enter the Fair site with sticks, placards, handbills or other materials for use in an unauthorized demonstration. ANy person violating this regulation is a trespasser, subject to ejection from the Fair, arrest and prosecution.

NY

djb
5/14/64

NEW YORK WORLD'S FAIR 1964-65 CORPORATION - non-profit membership corporation

---------- oOo ----------

Ch. 313 - Unconsolidated Laws 1963 Supp. Laws 1963 Ch. 892.

Special Police; Streets; Special Code for World's Fair Area.

1. The members of the police force provided by N.Y.W.F. 1964-65 pursuant to Subdiv. (f) of Section 2 of Chapter 428 of Laws 1960 shall, while in the performance of their duties, be peace officers, and shall possess the usual powers and authority of peace officers.

§2 [Summons Oaths]

§3 A violation of any provision of law relating to safety or the preservation of order occurring in the streets, roads, highways, sidewalks, or walkways of the property under the jurisdiction of New York World's Fair 1964-65 Corporation shall be deemed to have occurred on a public street, road, highway, sidewalk or walkway and not on private property. This act shall not, however, affect the status of such streets, roads, highways, sidewalks or walkways for the purposes of subdivision fourteen of section 61 of the public service law or for the purposes of any law, act or ordinance relating to taxation, licensing or vehicle registration, or for regulatory or any other purposes.

4. N.Y.W.F. 1964-65 Corporation may prepare a special code or codes of law dealing with prohibited acts, protecting life and property, regulation of traffic, fire prevention, regulation of parking, preservation of the peace and the arrest of offenders or any of the above.

Such special code or codes shall be submitted to the council of the city of N.Y. for its approval, and if such code or codes are approved by such council, then such council may enact same as and for a special code or codes of laws governing the area leased to N.Y.W.F. 1964-65 Corporation and such special codes shall be administered and enforced by N.Y.W.F. 1964-65 and the police forces provided by it.

Such special codes shall have the force and effect of local laws of such city and all provisions of the N.Y.City ..... in conflict are suspended.

Any violation ... shall be misdemeanor unless otherwise punished - and all fines and penalties collected thereunder shall be property of the city of N.Y. .....

MEMORANDUM FROM GEORGE SCHIFFER

TO : Core Chapters Participating in the
World's Fair demonstrations

May 15, 1964

Enclosed is a list of demonstrators awaiting trial.

Please identify those who are members of your Chapter and furnish addresses and telephone numbers as quickly as possible. The information should be filled in on a copy of the list and this copy should be sent to Carl Rachlin, 165 W., 46 Street. Please put the name of the Chapter and the name of the person in charge of compiling the information on the copy.

Thank you.

GEORGE SCHIFFER

A National Organization with affiliated local groups working

CONGRESS OF RACIAL EQUALITY CORE

THE 7 ARTS CHAPTER

to abolish racial discrimination by direct, nonviolent methods

303 WEST 42nd ST., RM. 507
NEW YORK, NEW YORK 10036
LT 1-0060

James Farmer
national director

Frances Foster
chairman
Juanita Bethea
co-chairman
Barbara Colton
secretary
Terry Foster
co-secretary
Richard Kanehl
treasurer
Lenka Peterson
co-treasurer

ADVISORY COMMITTEE
Theodore Bikel
Conrad Bromberg
Marcia Bromberg
Ossie Davis
Ruby Dee
Abagail Kellogg
Rev. Sidney Lanier
St. Clement's Church
David Margulies
Allyn Monroe
Patrick O'Neal
James Peck
Lenka Peterson
Louis Peterson
Dennis Tate

MAY 19 RECD

May 18, 1964

Carl Rachlin, Esq.
165 W. 46th Street
New York, N. Y.

Dear Mr. Rachlin:

Enclosed is the list of World's Fair demonstrators awaiting trial, on which we have designated those who are members of 7 Arts CORE as requested.

There is one girl listed (Lisa Gilford) who is the daughter of two of our members. I don't know what chapter, if any, she belongs to and I have been unable to reach her parents to find out. However, her parents, Mr. and Mrs. Jack Gilford, live at 75 Bank Street, New York City, and the telephone number is CH 3-7012. I cannot say whether or not Lisa lives with her parents, but I think she does.

Yours very truly,

Juanita Bethea

JUANITA BETHEA,
Co-Chairman

LIST COMPILED BY JUANITA BETHEA, CO-CHAIRMAN 5/18/64

a national organization with affiliated local groups working

CONGRESS OF RACIAL EQUALITY
CORE

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

James Farmer
national director
Richard Haley
associate
Gordon Carey
assistant
Carl Rachlin, Esq.
general counsel

ADVISORY COMMITTEE
Ralph Abernathy
James Baldwin
Roger N. Baldwin
Katrina M. Barnes
Algernon D. Black
James B. Carey
Allan Knight Chalmers
Grenville Clark
John Cogley
Earl B. Dickerson
Eugene E. Frazier
Harold Gibbons
Roland B. Gittelsohn
Sidney Hollander
George M. Houser
E. Stanley Jones
Bishop F. D. Jordan
Martin Luther King
Douglas Levin
David Livingston
Will Maslow
A. J. Muste
Dorothy Norman
A. Philip Randolph
Ira DeA. Reid
Walter P. Reuther
Hobson R. Reynolds
Jackie Robinson
Arnold M. Rose
Fred M. Shuttlesworth
Lillian Smith
C. K. Steele
Gardner Taylor
Howard Thurman
Bishop W. J. Walls
Goodwin Watson
Joseph Willen
Jerry Wurf
Charles S. Zimmerman

OFFICERS
Floyd B. McKissick
chairman
Rudolph Lombard
1st vice chairman
Wilfred Ussery
2nd vice chairman
Ralph Rosenfeld
secretary
Alan Gartner
treasurer
James Peck
CORElator editor

STAFF
Norman Hill
program director
James McCain
director of organization
Marvin Rich
community relations director

19 May 1964

MEMORANDUM

I, Betty Collins, of Tallahassee, Florida who together with Sherry Noyes, Carol Lustgarten and Doris Rutledge we arrested in the vicinity of the Florida Pavilion at the World's Fair, hereby authorize Howard Squadron, Esq. and his associated attorneys to begin an action in my name for the purpose of enjoining the World's Fair from preventing people from carrying on peaceful picketing and similar activities at the World's Fair.

Betty Collins

Cahill and Curtis

MAY 26 1964

Attorneys at Law

CLYDE S. CAHILL, JR.
ROBERT B. CURTIS

1204 FRANKLIN AVENUE
ST. LOUIS 6, MISSOURI
TELEPHONE CHESTNUT 1-5939

23 May 1964

Mr Carl Rachlin, Esq
38 Park Row
New York 38, NY

Dear Carl:

The following is our list of St. Louis CORE members who are slated to appear in court in New York on June 1st: Hall, Peake, Westerfield, Moore, Moore, Stelling, Ford, Butler, Pollack, Jones, Young, Hardy, Brisker, Perry.

It is also our understanding that James Peake was released on his own recognizance without bond. If this is not true please notify me immediately because Peake does not intend to make his appearance in court. Also It had come to mind that possible June 1st was a mistake because of the celebration of Memorial Day which falls on a Saturday this year.

Sincerely yours:

Robert B Curtis

ROBERT B. CURTIS

St. Louis, CORE

May 28, 1964

Mr. Jack Meyer
130 White Street
New York, New York

Dear Mr. Meyer:

I hereby assume personal responsibility for all bonds issued by you pursuant to our instructions on behalf of World's Fair demonstrators for arrests made on April 22nd.

Very truly yours,

Val Coleman
Assisant Community
Relations Director

VC:rrl

CC: Carl Rachlin

Bail bond

May 28, 1964

Mr. Jack Meyer
130 White Street
New York, New York

Dear Jack:

As per your request, Val Coleman has been authorized and instructed to assume personal responsibility for all World's Fair bonds. He is the Assistant Community Relations Director.

Annexed to this letter is a statement from Val assuming such responsibility.

Sincerely,

Carl Rachlin
General Counsel

CR:rrl

LAW OFFICES
BLUMENTHAL & SOMERS

ALBERT H. BLUMENTHAL
JOHN C. SOMERS

BENNET M. BLUMENTHAL
COUNSEL

JUN 1 REC'D

165 BROADWAY, NEW YORK 6, N. Y.
TELEPHONE WORTH 2-2445

May 28, 1964

Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

Re: James Farmer, et al
Criminal Court, Queens County

Dear Carl:

I appeared in Criminal Court, Queens County today to adjourn the cases pending against:

James Farmer
Ernest Green
Albert Wright
Rachelle Horowitz
Claudia Brown
Dorothy Conway
Nicasio Martinez
Helen Rayes
Michael Kensler

Judging from the Calendar and the complaints that I was able to read, each and every one of the above individuals is charged with disorderly conduct under Section-722(2),(4) and resisting arrest under Section 1851. Farmer, Green, Wright, Horowitz and Brown are charged with acting in concert with resisting arrest under Section 1851.

All of the above cases were adjourned to Part IB Criminal Court, Queens County, for trial on June 9, 1964, at 9:30.

I understand from the memorandum which I have read that was prepared by you and others, that pretrial motions addressed to certain constitutional questions will be made in all these cases. I also understand that the various attorneys appearing in these cases are seeking to coordinate their actions on behalf of the defendants and seek common direction in framing the issues. In this regard, I must note that a Moe Tandler, Esq. made an appearance this morning in the above cases and addressed the Court on an application that was out of order. Fortunately, the Court permitted on my application the withdrawal of Mr. Tandler's motion.

In view of the fact that there are less than two weeks before the trial date, I would like to suggest a meeting among

the attorneys on behalf of CORE in these cases, in order to determine who shall appear and what formal steps are anticipated and, most particularly, I would like to avoid the problems that I experienced this morning with Mr. Tandler.

Please advise me at your earliest convenience whether a meeting can be arranged.

Kindest personal regards.

Sincerely,

BLUMENTHAL & SOMERS

By John Somers

JS:nf

Rachlin

JUN 1 1964

May 29, 1964

Dear Mr. Farmer and Mr. Rachlin

I was among those arrested at the World's Fair demonstration on April 22. I want to write you about the problem of communication between CORE and its supporters. Be assured that my comments are meant to be fraternal. I feel that what I did at the World's Fair was a good thing, and what CORE did was even better. I don't grudge the small inconveniences the episode has entailed for me, and in fact feel richer for it. What my letter is about is the matter of inconveniences that go beyond the necessary, beyond what is inevitable, given the limited resources of CORE and the obdurateness of the police.

My chief question is: Why on earth haven't we who were arrested been given some report on the status of our cases? The degree of my ~~experience~~ ignorance may be exceptional because I'm not a member of CORE and ~~[illegible]~~ am outside your customary channels of informal communication. But just how much out of the picture I have been, you can judge from the misconception I have had as to what is to take place at the trial set ~~[illegible]~~ for Monday, June 1. ~~[illegible]~~ I was under the impression that there was a good chance that I would be faced with the alternative of going to jail for probably a small number of days, or of paying a fine. A conversation I have had with ~~[illegible]~~ Charles Courier, who was most helpful in outlining for me the status of our case, made me recognize how far off the mark I was. But if there are others who are as misinformed as I, surely a brief mimeographed advisory note would save numbers of people a good deal of trouble.

But the problem of communication goes deeper. I have assumed the trial procedure would be as cut-and-dry as the procedure when we were arraigned on the night of April 22. I saw no lawyer while in prison, and even when I was standing in the courtroom to be arraigned, I had no idea as to which of the people present were lawyers representing me. I had the impression that for professional reasons, CORE's lawyers were agreeing to the legal fictions promulgated by the other side, such as that ~~[illegible]~~ the Pinkerton officer who appeared beside my group of ten in the courtroom was in fact the person who arrested us, as he falsely claimed to be. Not until I spoke to Mr. Courier this afternoon did I learn that at the trial itself the procedure may be different, and that separate features of separate cases may be argued.

Yet it is still difficult for me to believe this because no one has spoken to me about the circumstances of my arrest. It appears that my case will be tried without my providing a word of evidence, even to my lawyer. If the points of law in these cases are so simple that the public evidence is enough to try them on, or if the arrest procedure was so patently illegal that there is good hope that the cases will be dismissed -- would it not be a simple thing to advise us all of this?

Well, certain things are bound to occur. It's my choice to depend on CORE for my defense, and I know that CORE is extraordinarily hardpressed in carrying out this work. It seems to follow that CORE is obliged to conform to the mass procedures instigated by the police: wer are arrested en masse, and thereafter must be tried en masse and defended en masse, becoming in fact persons to whom things are done, once we are engaged with the law. I regret this, at the same time that I accept it in part. But for goodness sake, Gentlemen, let s remember that the mass of us is composed of individual persons each of whom cares to know where he is going and what's in store for him.

A couple of more comments about communication. While in prison -- I was in for 40 hours -- I wondered at the absence of contact with the outside and had a few mean thoughts on the subject. I've since learned that the police impeded the efforts of CORE's lawyers, and that CORE itself was internally impeded by the bumper size of its crop of arrestees. But would this be possible in the future, when more people are arrested than CORE can reasonably give attention to: couldn't CORE's lawyers make concerted attempts to reach specific persons whom it knows to have been arrested, and who have positions of leadership in CORE? I know that among the people with whom I was jailed there was a tendency to look to the picket leaders for information. Certainly a conversation between one of these people and one of our lawyers would have reached a good many ears in the end.

Finally, I'd suggest that when mass arrests like this occur in the future, and only limited bail funds are available, some effort be made to determine if any of the people in prison have compelling reasons to be freed at the soonest possible moment. One of those with whom I was arrested, Bent Groves, is a man past 70. Bent, who suffers from asthma, is angelically patient, and impressed all of us who were near him with his forbearance. The police aren't about to make special arrangements for ailing people (the pills they gave Bent to replace the ones confiscated from him earlier caused him to have a bad reaction) and Bent had to be supported as he left the Hart's Island ferry at the strange hour arranged for our release. I would hope that in the future, if CORE's lawyers can make contact with CORE leaders in jail, these leaders would already have ascertained who had strong need to be released, and that whatever bail money is available should be devoted to these people.

I have a small bad feeling as I write this letter: that there is too much complaint in what I say. The complaint pertains to a small feature of the whole action, and I hope you will consider it in that perspective.

Sincerely yours,

Jules Rabin

Jules Rabin
14 Bedford St.
NYC

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
WORTH 6-4855

June 2, 1964

Mr. James Farmer
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Mr. Farmer:

In accordance with your request, I have prepared a copy of the lists that were picked up at my office by one of your representatives on the 23rd of April, 1964.

The enclosed lists represent the bail bonds I have posted in the Queens County Court and the Manhattan Court.

TOTAL AMOUNT OF PREMIUM DUE	$8,010.00
TOTAL AMOUNT RECEIVED-TO-DATE	1,500.00
BALANCE DUE	$6,510.00

Your attention in this matter is greatly appreciated.

Very truly yours

Jack Meyer
Lic. Bail Bondsman

JM:ap
Encl.(7)

[enclosed, Meyer to Farmer, 1964, June 2]

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.

WORTH 6-4855

JUN 3 1964

CORE BONDS

	NAME	AMOUNT	RETURN DATE
1.	ABEL, Katy	500.	5/15/64
2.	ABRASHKIN, William	500.	5/6/64
3.	ADKINS, Albert	500.	5/25/64
4.	" "	500.	5/25/64
5.	ADLER, Elizabeth	500.	5/6/64
6.	ALEXANDER, Sue	500.	5/25/64
7.	ALPER, Donald	500.	5/13/64
8.	AMOUR, Steve	500.	5/6/64
9.	ANDERSON, Franklin	500.	5/5/64
10.	" "	500.	5/5/64
11.	ASGEIRSSON, Eula	1000.	5/8/64
12.	" "	500.	5/8/64
13.	BACHELOR, William	500.	5/4/64
14.	BARAIN, Hiller	500.	5/18/64
15.	BARRON, Jerry	500.	5/7/64
16.	BARTOS, Michael	500.	5/6/64
17.	BASCOE, Monique	500.	5/6/64
18.	BAUMANN, HELLY	500.	5/21/64
19.	BELL, Velta	500.	5/18/64
20.	BEEBER, Tom	500.	5/6/64
21.	BOHONAN, Farmanica	500.	5/4/64
22.	BERMAN, Andrew	500.	5/14/64
23.	" "	500.	5/14/64
24.	" "	500.	5/14/64
25.	" "	500.	5/14/64
26.	" "	500.	5/14/64
27.	BOCH, Arlene	500.	5/6/64
28.	BOODIN, Kolgal	500.	5/15/64
29.	BOOKCHEIM, Murray	500.	5/15/64
30.	BONNER, Rebecca	500.	6/12/64
31.	BRADY, Mark	500.	5/4/64
32.	" "	500.	5/4/64
33.	BRADDOCK, George	500.	5/14/64
34.	BRAVERMAN, Jan	500.	5/15/64
35.	BONNIE, Biscoe	500.	5/6/64
36.	BROGAN, Patrick	500.	5/7/64
37.	BROWN, Bill	500.	5/25/64
38.	" "	500.	5/25/64
39.	BROWN, Claudia	500.	5/28/64
40.	BROWN, Eumeleda	500.	5/15/64
41.	BROWN, Marshall	500.	5/25/64
42.	" "	500.	5/25/64
43.	EUDARIN, George	500.	5/15/64

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
—
WORTH 6-4855

44.	BULKIN, Joel	500.	5/5/64
45.	" "	500.	5/5/64
46.	" "	500.	5/5/64
47.	BUTLER, Jacquelin	500.	5/6/64
48.	CANADO, Frederick	500.	5/7/64
49.	CHERNOFSKY, Daniel	500.	5/6/64
50.	CHERNOWITZ, Alax	1000.	5/25/64
51.	" "	500.	5/25/64
52.	CLARK, John	500.	5/18/64
53.	CLARK, Jimmie	500.	5/25/64
54.	" "	500.	5/25/64
55.	CLAYTON, Harris	500.	4/27/64
56.	COHEN, Jerry	500.	5/6/64
57.	CONWAY, Dorothy	500.	5/7/64
58.	COOK, Ronnie	1000.	5/27/64
59.	CORBETT, Phylliss	500.	5/25/64
60.	" "	500.	5/25/64
61.	COY, RONALD	500.	5/25/64
62.	CROWNER, David	500.	5/22/64
63.	CULVIN, Robert	500.	5/12/64
64.	DANTZIER, Thelma	500.	5/26/64
65.	DAVIS, Loria	500.	5/18/64
66.	DAVIS, Mars	500.	5/12/64
67.	DAVIS Paul	500.	5/14/64
68.	" "	500.	5/14/64
69.	DAVIS, Roy	500.	5/15/64
70.	DICKSON, John	500.	5/4/64
71.	DIGILIO, Joseph	500.	5/7/64
72.	DIX, Peter	500.	5/12/64
73.	DIXON, John	500.	5/4/64
74.	DOCTOR, Henry	500.	5/25/64
75.	" "	500.	5/25/64
76.	DOE, John	500.	5/4/64
77.	DRAUICH, Jay	500.	5/6/64
78.	DREW, Joseph	500.	5/7/64
79.	" "	500.	5/18/64
80.	DUBUMAN, David	500.	5/7/64
81.	DUE, Patricia	500.	5.25/64
82.	" "	500.	5/25/64
83.	DURHAM, Steve	500.	5/6/64
84.	EINHORN, Carl	500.	5/12/64
85.	EISENBERG, Eric	500.	5/11/64
86.	EPSTEIN, Howard	500.	5/4/64
87.	" "	500.	5/4/64
88.	ESPADA, Frank	500.	5/6/64
89.	FARBER, Tedi	500.	5/13/64
90.	FARRAR, Winifred	500.	5/6/64
91.	FARMAIN, Barbara	500.	5/4/64
92.	FEINGOLD, Paul	500.	5/6/64
93.	FERGUSON, Earthline	500.	5/7/64

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
WORTH 6-4855

94.	FISHER, John	500.	5/12/64
95.	FLUG, Michael	500.	5/12/64
96.	FOA, Sylvania	500.	5/6/64
97.	FORBS, Williams	500.	5/6/64
98.	FORD, Louis	500.	5/6/64
99.	FOSTER, Joan	500.	5/6/64
100.	FRUCHTER, Norman	500.	6/4/64
101.	GABNIELSKY, Robert	500.	5/15/64
102.	GALPER, Jeffry	500.	5/6/64
103.	GEIGER, Helen	500.	5/6/64
104.	GETHERS, Joan	500.	5/11/64
105.	GILMARTER, Allan	500.	5/2/64
106.	GLUSHAKAN, Bruce	500.	5/7/64
107.	GORDON, Paula	500.	5/25/64
108.	GOULD, Paul	500.	5/12/64
109.	GREEN, Ed Smith	500.	5/11/64
110.	GREEN, Ernie	1000.	5/28/64
111.	GREENBERG, Michael	500.	4/30/64
112.	GRIPPER, Vernall	500.	5/25/64
113.	" "	500.	5/25/64
114.	GRONES, Brut	500.	5/6/64
115.	GRUZEN, Marjorie	500.	5/11/64
116.	GUTMAN, M.	500.	5/12/64
117.	" "	500.	5/12/64
118.	HAHBOHM, William	500.	5/18/64
119.	HALL, Loretta	500.	5/6/64
120.	HOLPER, James	500.	5/11/64
121.	HARDY, Herbert	500.	5/12/64
122.	HARRINGTON, Donald	500.	5/18/64
123.	HARRINGTON, Edward M.	500.	5/18/64
124.	HARRIS, Clayton	500.	4/27/64
125.	HARRIS, Jane	500.	5/6/64
126.	HARRIS, Jonathan	500.	5/12/64
127.	HARRIS, Mary	500.	5/20/64
128.	" "	1000.	5/20/64
129.	HARRIS, Robert	500.	5/11/64
130.	HEIFETZ, Henry	500.	5/25/64
131.	HEWITT, Sarah	500.	5/26/64
132.	HIST, Owne	500.	5/14/64
133.	HOOKES, Lourras	500.	5/25/64
134.	" "	500.	5/25/64
135.	HOROWITZ, Rochelle	500.	5/28/64
136.	HURWITZ, Thomas	500.	5/5/64
137.	HUTCHINAS, Vivian	500.	5/6/64
138.	INSOLIA, Joyce	500.	5/6/64
139.	JACKSON, Blyden	500.	5/22/64
140.	JACOBS, Alice	500.	5/6/64
141.	JACOBS, Martin	500.	5/6/64
142.	JAFFE, ROBERT	500.	5/6/64
143.	JAMPEL. Sheila	500.	5/6/64

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
WORTH 6-4855

144.	JASMIN, Judith	500.	5/6/64
145.	JASPER, Paul	500.	5/6/64
146.	JENKINS, Loren	500.	5/25/64
147.	" "	500.	5/25/64
148.	JONES, Jimmie	500.	5/22/64
149.	JONES, Taylor	500.	5/6/64
150.	JONES, William	500.	5/22/64
xlxlx.			
151.	KAGAN, Georgette	500.	5/6/64
152.	KAHN, Thomas	500.	5/4/64
153.	KEHOL, Katherene	500.	5/12/64
154.	KALENBRT, Gus	500.	5/4/64
155.	" "	500.	5/4/64
156.	KALIN, Thomas	500.	5/18/64
157.	KALINTGIS, Gus	500.	5/4/64
158.	KATZ, Jeffrey	500.	5/12/64
159.	KEARY, Ershine	500.	5/15/64
160.	KEITH, Frances	500.	5/12/64
161.	KEIR, Eva	500.	5/15/64
162.	KEVENO, Eliot	500.	5/12/64
163.	KINSLER, Michael	500.	5/7/64
164.	KIT, Komatsu	500.	5/11/64
165.	KLEIN, Michael	500.	5/6/64
166.	LARSEN, Robert	500.	5/22/64
167.	LAWSON, Carol	500.	5/12/64
168.	LIPPET, Marla	500.	6/12/64
169.	LITTLE, William	500.	5/14/64
170.	" "	500.	5/14/64
171.	LLOYD, Robert	500.	5/4/64
172.	LOUSI, Joseph	500.	5/6/64
173.	LUDRIG, G.	500.	5/21/64
174.	LUDWAG, G.	500.	5/21/64
175.	LYMIS, Carolyn	500.	5/21/64
176.	MADISON, William	500.	5/12/64
177.	MAIDMAN, Maynard	500.	5/12/64
178.	MANUEL, George	500.	5/6/64
179.	MAPP, Thomas	500.	5/4/64
180.	" "	500.	5/4/64
181.	MARGOLIES, Michael	1500.	4/24/64
182.	" "	500.	4/24/64
183.	" "	500.	4/24/64
184.	MARKMAN, Barry	500.	5/25/64
185.	MARSHARD, Jacques	500.	5/22/64
186.	MARTIN, Rubin	500.	5/4/64
187.	MARTIN, Russell	500.	5/6/64
188.	MARTINEZ, Nicasio	500.	5/28/64
189.	MEYERS, Robin	500.	5/22/64
190.	MILLER, Florence	500.	5/6/64
191.	MILLER, Robert	500.	5/6/64

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
WORTH 6-4855

192.	MILLER, William	500.	5/22/64
193.	MIRANDO, Victor Jr.	500.	5/6/64
194.	MITCHELL, Eliz	500.	5/12/64
195.	MITCHELL, Jeffrey	500.	5/12/64
196.	MOORE, Booker	500.	5/6/64
197.	MOORE, Gladys	500.	5/6/64
198.	MURPHY, Maureen	1000.	5/20/64
199.	" "	500.	5/20/64
200.	MYERS, Robin	500.	5/20/64
201.	McCORMICK, Bob	500.	5/22/64
202.	McLAUGHLIN, Andrew	500.	5/12/64
203.	NELSON, Gilbert	500.	5/7/64
204.	NEVIN, Randy	500.	5/11/64
205.	NIEOGS, Robert	500.	5/15/64
206.	NYDE, Paul	500.	5/6/64
207.	OESTERBEICHTER, Arthur	500.	5/6/64
208.	OLGORMAN, Joan	500.	5/6/64
209.	OLIVER, Harvey	500.	5/6/64
210.	PAIN, Robert	500.	5/7/64
211.	PADOW, Robert	1500.	4/24/64
212.	" "	500.	4/24/64
213.	" "	500.	4/24/64
214.	RADUCE, Michael	500.	5/22/64
215.	PALMER, Christine	500.	5/21/64
216.	PATTERSON, Susan	500.	5/20/64
217.	PAULY, John	500.	5/20/64
218.	PECK, James	500.	5/18/64
219.	PEAKE, James Jr.	500.	5/6/64
220.	" " "	500.	5/6/64
221.	PERDU, Lane	500.	5/25/64
222.	" "	500.	5/25/64
223.	PEREZ, Louis	500.	5/6/64
224.	PERMUTTER, Steve	500.	5/6/64
225.	PERRA, Ivory	500.	5/6/64
226.	PETERS, Steven	500.	5/4/64
227.	" "	500.	5/4/64
228.	PIERCE, Judith	500.	5/12/64
229.	PISSARENSKY, Joseph	500.	5/6/64
230.	PLUMNES, Lucille	500.	5/25/64
231.	" "	500.	5/25/64
232.	POLLOCK, Danny	500.	5/7/64
233.	PARLIN, Jeanne Lee	500.	5/21/64
234.	POST, Cynthia	500.	5/6/64
235.	PUTTERMAN, Harriett	500.	5/6/64
236.	QUINTYNE, Delores	500.	5/6/64
237.	RABIN, Julius	500.	5/6/64
238.	REER, Karl V.	500.	4/30/64
239.	REYES, Helen	500.	5/7/64
240.	ROBERSON, Frank	500.	5/25/64

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
WORTH 6-4855

241.	ROBERSON, Frank	500.	5/25/64
242.	ROBERTS, Eda	500.	5/25/64
243.	" "	500.	5/25/64
244.	ROBERT, Jaffe	500.	5/6/64
245.	ROBERT, Lloyd	500.	5/4/64
246.	ROBINSON, Louis	500.	5/6/64
247.	RODRIGUEZ, Ruth	500.	5/6/64
248.	RONEL, Jemera	500.	5/6/64
249.	ROTI, Vincent	500.	5/7/64
250.	RUBIN, Martin	500.	5/4/64
251.	" "	500.	5/4/64
252.	RUSHING, Byron	500.	5/12/64
253.	RUSHING, Lawrence	500.	5/12/64
254.	SCHAPIRO, Robert	500.	5/7/64
255.	SCHMIDT, Thomas	500.	6/8/64
256.	SCOTT, Earl	500.	5/6/64
257.	SHARROW, Elouise L.	500.	5/11/64
258.	SHATKIN, Norman	500.	5/15/64
259.	SHERMAN, Eugene	500.	5/11/64
260.	" "	500.	5/11/64
261.	SHITKIN, Joan	500.	5/15/64
262.	SIEGAL, Larry	500.	5/15/64
263.	SKLAR, Eugene	500.	5/15/64
264.	" "	500.	5/25/64
265.	" "	500.	5/25/64
266.	" "	500.	5/25/64
267.	SLUTSKY, Martin	500.	5/7/64
268.	SOLGANICK, Allen	500.	5/6/64
269.	" "	500.	5/6/64
270.	STARZZNSKI, Susan	500.	5/12/64
271.	STATMAN, James	500.	5/6/64
272.	STELLING, Joan	500.	5/6/64
273.	STEVENS, Patricia	500.	5/25/64
274.	" "	500.	5/25/64
275.	STRAUSS, Arthur	500.	5/7/64
276.	SUTLIFE, Jack	500.	5/4/64
277.	TAYLOR, Francis	500.	5/15/64
278.	TAYLOR, Sandra	500.	5/15/64
279.	TENNEY, Gerald	500.	5/6/64
280.	THOMPSON, John	500.	5/12/64
281.	TISHMAN, Mark	500.	5/6/64
282.	TRESTMAN, Irene	500.	5/12/64
283.	TOURNANT, Eugene	500.	5/11/64
284.	VAUDEURS, Kay	500.	5/12/64
285.	WALKER, Margaret	500.	5/15/64
286.	WALLERSTEIN, Steve	500.	5/7/64
287.	WALKER, Pat	500.	5/6/64
288.	WEINERMAN, Diane	500.	5/7/64
289.	" "	500.	5/7/64

JACK MEYER
Bail Bonds
130 WHITE STREET
NEW YORK 13, N. Y.
—
WORTH 6-4855

		AMOUNT OF BAIL	RETURN DATE
290.	WEINSTOCK, Rosalind	$500.	5/15/64
291.	WEINSTONE, Laurie	500.	5/7/64
292.	WEISMAN, Dena	500.	5/6/64
293.	WEISS, Joel	500.	5/22/64
294.	WEST, Frederick	500.	5/6/64
295.	" "	500.	5/6/64
296.	WESTERFIELD, Barbara	500.	5/6/64
297.	WIDMAN, Donald	1000.	5/15/64
298.	" "	500.	5/13/64
299.	WILSON, Theodore	500.	5/21/64
300.	WINTOR, Frederick	500.	5/12/64
301.	WRIGHT, Alberta	500.	5/28/64
302.	YEARWOOD, Carlisle	500.	5/6/64
303.	YOUNG, Geneva	500.	5/6/64
304.	ZAGARELL, Allen	500.	5/13/64
305.	ZIEFERT, Marjorie	500.	5/6/64
306.	ZINN, Sheldon	500.	5/6/64
307.	QUANDA, Howard	100.	5/7/64
308.	" "	100.	5/7/64

BAIL BONDS EXECUTED 5/14/64

309.	CALLENDER, Herbert	500.	5/21/64
310.	FLESCH, Walter	500.	5/21/64
311.	MEYER, Joel	500.	5/21/64

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York 19, N. Y.
JUDSON 6-8397

Wallis Sales Squadron

ALLAN KNIGHT CHALMERS
President

JACK GREENBERG
Director-Counsel

CONSTANCE BAKER MOTLEY
Associate Counsel

June 5, 1964

JUN 8 1964

Howard Squadron, Esquire
32 East 57th Street
New York, New York

Dear Howard:

Enclosed is a memorandum with a few points which in my opinion should be incorporated in our reply brief. There is, however, a great deal more I believe we have to say in reply to the affidavit of Mr. Poletti.

Yours,

Michael Meltsner

MM/et

Enclosure

cc Carl Rachlin, Esquire

Contributions are deductible for U. S. Income Tax Purposes

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
10 Columbus Circle, New York 19, N. Y.
JUDSON 6-8397

ALLAN KNIGHT CHALMERS
President

JACK GREENBERG
Director-Counsel

CONSTANCE BAKER MOTLEY
Associate Counsel

June 5, 1964

MEMORANDUM

TO: Howard Squadron, Carl Rachlin

FROM: Michael Meltsner

RE: Observations Re Reply Brief in Fair Case

1. Valle v. Stengel, 176 F.2d 697 (3rd Cir. 1949) is a strong case in our favor. It upheld cause of action for damages and injunction under Civil Rights Act brought by Negroes claiming exclusion from swimming pool of private corporation owning Palisade Amusement Park (about as close to World's Fair as you can get). Significantly, pool was inside park grounds and separate admission charge necessary for entry. "State action" making the corporation responsible under Constitution was based on allegation that Chief of Police of town in which park located assisted corporate defendant in excluding plaintiffs and he, having police powers under state law, acted under color of state law. A fortiori: the Fair not only enforces its policy with persons made police under state law but it employs these persons itself. In Valle, at least Chief was not directly responsible to Amusement Park. At Fair police are under complete control of corporation.

2. Partial list of cases of private corporations and persons held subject to constitutional restraints in order to emphasize it isn't unusual.

A. Cited in our Brief:

Burton v. Wilmington Parking Authority

Simkins v. Moses H. Cone Hospital

Eaton v. James Walker Hospital (unreported as of yet; decided April 1, 1964.) NOTE: Put date of decision in Reply Brief as earlier Eaton opinion (which is reported) is against us. (It was overruled in latest opinion.)

Smith v. Holiday Inns

Marsh v. Alabama

People v. Barisi

Anderson v. Moses

Boman v. Birmingham Transit Co.

Baldwin v. Morgan

Public Utilities Comm'n. v. Pollak

Pennsylvania v. Board of Directors of City Trust of Philadelphia

Kerr v. Enoch Pratt Library

B. Not cited in our Brief:

Valle v. Stengel, supra

Hampton v. City of Jacksonville, 304 F.2d 320 (5th Cir. 1962) (Private owners of golf course may not violate equal protection clause because city has reverter on property. Analogous to city receiving profits of Fair.)

McDuffie v. Florida Turnpike Authority, 7 Race Relations Law Reporter 505 (Restaurant leased by private party from State Turnpike Authority.)

Derrington v. Plummer, 240 F.2d 922 (5th Cir. 1960) (Refusal to serve Negroes in cafeteria leased from state and located in courthouse.)

Terry v. Adams, 345 U.S. 461 (Delegation of election function to private group excluding Negroes.)

McCabe v. A.T. & S. F. Ry. Co., 235 U.S. 151 (Racial discrimination permitted by a state law which provided company did not have to provide luxury accommodations on trains for whites and Negroes. "State action" founded on the state law.)

3. Helpful Quotes:

"When authority derives in part from government's thumb on the scales, the exercise of that power by private persons becomes closely akin, in some respects, to its exercise by government itself"

American Communications Association v. Douds, 339 U.S. 382, 401.

"Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it . . ." Marsh v. Alabama, 326 U.S. 501, 506.

4. I am not in favor of elaborating in terms of the cases why we have a right to demonstrate inside the Fair unless forced to do so by their Brief. The following factors support our position:

A. We have a specific grievance against specific pavilions, etc.--the argument made so well by Carl on Tuesday. Impact of our ideas lost if not presented at those pavilions.

B. In the same manner one handing out leaflets on Wall Street, in Central Park or Penn. Station must abide by reasonable rules, so as not to block passage, etc., plaintiffs will abide by reasonable rules at the Fair. But those rules cannot work to bar plaintiffs from the 640 acres. This would be tantamount to telling the defendant in Marsh v. Alabama to stand outside the town limits on the highway which bisected the town and distribute literature. Even if some inconvenience caused, however, this is the price paid for freedom of speech. See Cooper v. Aaron, 358 U.S. 1, 16; Edwards v. South Carolina; Terminiello v. Chicago, ___U.S.___: Wright v. Georgia, 373 US. 373 U.S. 284; Watson v. Memphis, 10 L.ed 2d 529, all standing for proposition constitutional rights may not be denied simply

because of possibility of violence.

C. There are places physically appropriate for the kind of thing we wish to do at the Fair--streets, plazas, sidewalks, etc.

LAW OFFICES
SCHIFFER & COHEN

JUN 10 Rec'd

BARRY LEE COHEN
GEORGE SCHIFFER

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

June 9, 1964

Mr. Joel Cohan,
38 Post Avenue,
New York, N.Y.

Dear Joel:

This morning your case was ended. Technically the World's Fair people withddew their petition. The effect of this is somewhat more clearly in your favor than a dismissal, since as far as the records go, it is as if the charge had never been made. Under the circumstances, no further action is required. I have received releases running to you with respect to civil liability from theFair and the Pinkertons. These releases have no particular significance. I have also delivered the release which you signed in favor of the Fair, the Pinkertons and various other parties.

With best wishes,

Sincerely,

George Schiffer

cc: Carl Rachlin, Esq.

LAW OFFICES
BLUMENTHAL & SOMERS

ALBERT H. BLUMENTHAL
JOHN C. SOMERS

BENNET M. BLUMENTHAL
COUNSEL

165 BROADWAY, NEW YORK 6, N. Y.
TELEPHONE WORTH 2-2445

JUN 11 REC'D

June 9, 1964

George Schiffer, Esq.
40 East 49th St.
New York, N. Y.

Re: People v. Horowitz et al.

Dear George:

Al Blumenthal of this office appeared in Criminal Court, Queens, on the above cases today.

The following cases were adjourned to June 17, 1964, peremptorily against the defendants:

	Name	Docket #s.
	James Farmer	2300; 2305
	Ernest Green	2301; 2306
	Alberta Wright	2302; 2307
	Rachelle Horowitz	2303; 2308
	Claudia Brown	2304; 2309
	Sue Alexander	2276; 2277
	Francis Keith	2264; 2265
	Dorothy Conway	2240
	Nicasio Martinez	2289; 2290
	Helen Reyes	2295; 2296
	Michael Kinzler	2326; 2327
*	Elizabeth Adler	2412; 2413; 2414; 2496; 2497; 2535; 2536
*	Gular Glover	?

* Two defendants who were permitted to vacate their prior default and reinstate their bail bonds.

Each defendant was specifically instructed to appear on June 17th.

In addition to the above certain cases on which Moe Tanler, Esq. has appeared were adjourned:

June 18, 1964	Bob McCormick	2311
	Allan Gilmartin	2310
July 2, 1964	Henry Heifitz	2254; 2255

Kindest personal regards.

Sincerely yours,

BLUMENTHAL & SOMERS

By_____
John Somers

JS:nf

COPY

JUN 10 RECD

LAW OFFICES
SCHIFFER & COHEN

BARRY LEE COHEN
GEORGE SCHIFFER

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

June 9, 1964

Mr. Thomas Perry,
3758, 10th Avenue,
New York, N.Y.

Dear Tom:

This morning your case was ended. Technically the World's Fair people withdrew their petition. The effect of this is somewhat more clearly in your favor than a dismissal, since as far as the records go, it is as if the charge had never been made. Under the circumstances, no further action is required. I have received releases running to you with respect to civil liability from the Fair and the Pinkertons. These releases have no particular significance. I have also delivered the release which you signed in favor of the Fair, the Pinkertons and various other parties.

With best wishes,

Sincerely,

George Schiffer

cc: Carl Rachlin, Esq.

JUN 16 1964

2657-Merrick Road
Bellmore, Long Island
June 15, 1964.

Schaffer

Dear Mr. Farmer:

I am in the group of demonstrators arrested at the U.S. Pavilion of the World's Fair on April 22. Trial was scheduled for May 22, and having taken a day off from my teaching duty, I was greatly peeved when the trial was adjourned to June 16. To date, it has already cost me well over one hundred dollars (two days' pay, plus the fifty-dollar bail) and a letter of remonstrance from the Board of Education about my absences.

Especially at this time of year, school closing on June 19, it is imperative that I be present every day in order to complete procedures attendant upon clearance. Also, I am preparing to leave for the orientation at Women's College, Oxford, Ohio, June 21, preparatory to going to Mississippi as a freedom school teacher.

So, I should like to inform you that I shall not be able to present myself in court tomorrow, and I request that the lawyer of the organization clear this for me. I would not like to forfeit my bail.

Sincerely,
William D. Jones

Sid Weisberg
Jack Meyer
130 White
see note

Stephen Amdur
47 Bay State Rd.
Belmont 78, Mass.

June 22, 1964

Mr. Val Coleman
c/o CORE
38 Park Row
New York 38, N.Y.

Dear Mr. Coleman

I was arrested with the CORE World's Fair demonstrations at the Schaeffer Pavillion on April 22. I was bailed out by my parents with $550 in cash at Hart Island on April 23, about 3 P.M. All charges against me were dismissed in Queens Criminal Court, Part 1B, on June 17. Mr. George Schiffer has advised me to mail you my bail receipts in order to get back my $550 bail money.

I enclose the bail receipts and a stamped, self-addressed envelope. If for any reason you are unable to send the receipts through for me, please mail them back by certified mail immediately. If you have time, I would appreciate knowing roughly how soon to expect the bail money back.

Please note that my family paid the entire $550 in cash; no bondsman was used.

Thank you kindly for your trouble.

Yours truly
Stephen Amdur
Stephen Amdur

34 — (3-63 - 200 Bks.) NO. 1

A Nº 33411

THE PEOPLE, Etc.

vs.

Steve Amdur

#147

Offense Dis Con

Surety Steve Amdur

Residence 855 West End Ave

NYC

NEW YORK, April 23 1964

THIS IS TO CERTIFY that the above named defendant was held on April 22, 1964 by HON. Chassen presiding at CCNY PT 1B Queens Court, in the sum of — FIFTY — DOLLARS. RECEIPT IS ACKNOWLEDGED from the above named surety of cash OR securities deposited in lieu of bail herein as follows:

CASH — FIFTY — DOLLARS $ $50.00

Cert. No.	Description of Securities	Coupons Attached From	To	Amount	
			Total Securities $		

F. Moran Capt 178
Warden Clerk

IMPORTANT—*Notice*:—If securities are deposited this receipt must be surrendered to the Director of Finance of the City of New York at the time the depositor becomes entitled to the return of the securities. The surrender of the receipt by the HOLDER thereof shall constitute a full and valid delivery of the described securities and release the Director of Finance from any and all liability thereof. Securities must be called for at this office. Checks for cash will be mailed.

DIRECTOR OF FINANCE OF THE CITY OF NEW YORK
Room 201, Municipal Building, NEW YORK CITY.

Receipt to Surety.

Docket 2509
EXAM DATE 4-24-64.
called L/H 9300 9 A. M. 4/24 - Mr. Brown said don't need to appear

34 — (3-63 - 200 Bks.) NO. 1

A Nº 33410

THE PEOPLE, Etc.

vs.

Steve Amdur

H 147

Offense 1851 P.L.

Surety Steve Amdur

Residence 855 West End Ave

N.Y.C.

NEW YORK, April 23 1964

THIS IS TO CERTIFY that the above named defendant was held on April 22, 1964 by HON. Chassen presiding at C.C.N.Y. Pt. 1B Queens Court, in the sum of Five Hundred —— DOLLARS. RECEIPT IS ACKNOWLEDGED from the above named surety of cash OR securities deposited in lieu of bail herein as follows:

CASH Five Hundred DOLLARS $ 500.00/xx

Cert. No.	Description of Securities	Coupons Attached From	To	Amount	
			Total Securities $		

F. Moran Capt. #78

Warden—Clerk

IMPORTANT—*Notice*:—If securities are deposited this receipt must be surrendered to the Director of Finance of the City of New York at the time the depositor becomes entitled to the return of the securities. The surrender of the receipt by the HOLDER thereof shall constitute a full and valid delivery of the described securities and release the Director of Finance from any and all liability thereof. Securities must be called for at this office. Checks for cash will be mailed.

DIRECTOR OF FINANCE OF THE CITY OF NEW YORK
Room 201, Municipal Building, NEW YORK CITY.

Receipt to Surety.

Docket B 2592

Exam. 4-24-64.

JUN 26 1964

Sid or Steve

World's Fair

250 Mt. Vernon Pl 9E
Newark 6, New Jersey
June 19, 1964

Dear Sir:

A charge of disorderly conduct against me was dismissed on June 18 in Queens County Criminal Court.

My attorney, George Schiffer, instructed me to send you my bail receipt in order to get my bail back. Thank you for your cooperation.

Very truly yours,
Allan B. Gilmartin

$103 00 76270

4-13-64

DOCKET # B 2310.

A Nº 33426

(3-63 - 200 Bks.) NO. 1

THE PEOPLE, Etc.

vs.

ALLAN GILMARTIN

Offense DIS. CONDUCT

Surety ALLEN GILMARTIN

Residence 750 MT. VERNON PL.

NEWARK N.J.

NEW YORK, APR. 13 1964

THIS IS TO CERTIFY that the above named defendant was held on APR. 11 1964

by HON. DUBIN presiding at C.C. PT. 1 B Court, in the

sum of FIFTY ($50.00 MD) DOLLARS. RECEIPT IS ACKNOWLEDGED from the

above named surety of cash OR securities deposited in lieu of bail herein as follows:

CASH FIFTY DOLLARS $ 50.00

Cert. No.	Description of Securities	Coupons Attached From	Coupons Attached To	Amount
	Total Securities $			

× Viola A. Sturges

Warden—Clerk

IMPORTANT—*Notice*:—If securities are deposited this receipt must be surrendered to the Director of Finance of the City of New York at the time the depositor becomes entitled to the return of the securities. The surrender of the receipt by the HOLDER thereof shall constitute a full and valid delivery of the described securities and release the Director of Finance from any and all liability thereof. Securities must be called for at this office. Checks for cash will be mailed.

DIRECTOR OF FINANCE OF THE CITY OF NEW YORK
Room 201, Municipal Building, NEW YORK CITY.

Receipt to Surety.

June 26, 1964

TO: C. Rachlin

Jules Zolan 'phoned in following message:

"Bulletin #15 to the Judges
" #34 to the Clerks

Re: Bail Bond

Effective immediately the bonds and Notice of Forfeiture in all cases in which there is revocation of bail and a forfeiture declared, shall be sent to the Administrative Judge at the end of each day. Within 7 calendar days of the date of forfeiture any Defendant may make written application of the Administrative Judge supported by appropriate proof requesting consideration of the reinstatement of the bond where there is a claim that forfeiture was merely technical in nature. Copy of the application and proof shall be served on the District Attorney of the appropriate County. The application shall be considered by the Administrative Judge or a Judge of the Criminal Court designated by him. When denied, or when no such application is made, the remedy presently existing shall remain available in all cases in which a forfeiture has been declared.

S/ Larry Vetrano
Administrative Judge."

Harriet

Worlds Fair

June 26, 1964

Mr. William D. Jones
2657 Merrick Road
Bellmore, Long Island

Dear Mr. Jones:

Your letter of June 15th to Mr. Farmer arrived in my hands today.

Please be advised that you have no right to take it upon yourself to leave for Oxford, Ohio, as important as that work is, without clearing with us first. It is very likely that you will not be able to reinstate the bail, which is now forfeited in your name.

We appreciate the inconvenience you may have suffered, but I am sure that as a mature person you understand that there are necessary consequences, of which you should be proud, which result from your participation on April 22nd in the activities at the World's Fair.

Your taking off in this fashion, without an appropriate legal excuse, not only forfeits the bail in your name, but will result in the Court issuing a warrent for your arrest, despite efforts on our part to forestall this. No one has a right to jump bail, especially when it has been put up by someone else.

Very truly yours,

Carl Rachlin
General Counsel

CR:rrl

CC: Mr. Marvin rich
George Schiffer, Esq.

June 28, 1964

Mrs. Michèle Kagan
617 W. 113 St.
New York 25, N.Y.

JUN 29 1964

File - W Fair

Dear Mr. SCHIFFER:

I write to you because you have become a familiar face at the SCHAEFFER's trial of the Civil Rights group. My daughter paid $1.- for the purpose of obtaining her fingerprint. But so far nothing was returned to her. I enclose a copy of her letter to the head clerk of the QUEENS CRIMINAL COURT . Kindly notice that I mentioned cc to: Carl Rachlin, since officially I remember the latter represented the Civil Rights Group from Schaeffer Pavillion. But you are the mainspring for whatever action has to be taken and I know you will answer my request any time.

I will be on vacation (2 weeks) starting June 29; July 12 back in the city. If by that time we do not get the fingerprint back, I know I can take the liberty to call on you again. You have endeared yourself to all of us.

SINCERELY, Michèle Kagan

Michele Kagan, mother of Georgette Kagan.

Georgette KAGAN
617 West 113 Street
New York 25, N.Y.

JUNE 28, 1964

JUN 29 1964

To the head Clerk of the
Criminal COURT OF QUEENS
Kew Gardens, N.Y.

Dear Sir:

On June 17, 1964 I paid one dollar in cash for the purpose of obtaining my fingerprint since I was released before trial. (At the trial itself all peaceful demonstrators in front of the SCHAEFFER PAvillion were dismissed, all charges dropped etc.). I am still awaiting the fingerprint and I ask you respectfully to expedite the matter.

Kindly refer this letter to the attention of the proper person and division.

Respectfully submitted,

GEORGETTE S. KAGAN

cc: Attorney Carl Rachlin

Lawyers Constitutional Defense Committee, Inc.
Ninth Floor
156 Fifth Avenue
New York, N. Y. 10010
YU 9-7530

File
WF
JUL 7 1964

July 2, 1964

COPY

Mr. James Farmer
CORE
38 Park Row
New York 38, N.Y.

Dear Jim:

I am enclosing a check from the Director of Finance of New York in the amount of $19.00, constituting refund of the bail that CORE put up for me in connection with our World's Fair demonstration, less a deduction of 2% (God only knows what for). I have endorsed the check to CORE.

Cordially,

Henry Schwarzschild
Executive Secretary

HS:c
Enc.
CC: Mr. Carl Rachlin

Stephen Amdur
47 Bay State Rd.
Belmont 78, Mass.
July 2, 1964

JUL 6 1964

WF-
fwb

Val Coleman
CORE
38 Park Row
N.Y. 38, N.Y.

Dear Mr. Coleman

I was arrested at the World's Fair April 22; my parents paid the entire $550 bail; all charges against me dropped June 17. In paying the bail, I received two receipts; one for $50, one for $500.

I received today a check from the N.Y. Department of Finance for $49; am still waiting for refund of the $500 bail. Can you find out if there has been a slip-up.

Details: File number on receipt for $500 cash: A No. 33410
Docket Number on that charge: B2592
File No. on check I have received: 46158 AMDUR

Thanks kindly for your help.

Yours truly,
Stephen Amdur

File
U/F

July 2, 1964

Mr Arthur Oestricher
1075 Liachia Avenue
Teaneck, New Jersey

Dear Sir:

After the World's Fair demonstration, in which you were arrested, you were bailed out from jail by your own resources. If you would like to get your money back, please get in contact with Mr. Julius Weinstock, Clerk of the Court, Part I-B, Queens County Criminal Court, 125-01 Queens Boulevard, Queens, New York (Tel. LI 4-9300, X 598)

If you have any further questions, please feel free to contact us.

Sincerely yours,

Charles Currier,
Asst. to Carl Rachlin

CC:rrl

The Hon. John M. Murtagh
Administrative Judge
New York City Criminal Court
100 Centre Street
New York, New York

Dear Sir:

While awaiting trial here in New York I received word that I was not needed for trial.

Upon returning home I received a letter saying I was supposed to have appeared in court during the month of June when I hadn't been notified.

The letter instructed me to appear in court at once, but it didn't state a specific date so in the meantime I decided to wait in hopes of being told what date to appear in court. It took me quite a while to find out what I was supposed to do, since I don't know about courts.

I am deeply full of regret. Due to the facts of my absence I ask you to please understand and accept my sincere apology.

Respectfully yours,

Verla Bell

Verla Bell
Clinton, Louisiana

July 8, 1964

Docket # 1216

The Hon. John M. Murtagh
Administrative Judge
New York City Criminal Court
100 Centre Street
New York, New York

Dear Sir:

First of all, having been bonded out of jail, I had known not to leave New York for Clinton, Louisiana until trial which was set for the 18th day of May.

While waiting here in New York for trial I received word that I wasn't needed at trial. I then went back to Clinton, Louisiana. On May 26th I received a letter from the Kew Gardens Criminal Court telling me to appear in court but it didn't state when. I didn't really know what to do.

I was unable to get in touch with my lawyers at the time but I left messages for them to check and find out what I was supposed to do.

I must say I am very, very sorry that I wasn't present at the trial. I assure you it wasn't intentionally.

Very sincerely yours,

Loria Davis

Loria Davis
Clinton, Louisiana

July 8, 1964

Docket # 1210

M E M O R A N D U M

JUL 10 RECD

To: Carl Rachlin

From: Howard M. Squadron, Esq.

Re: Farmer vs Moses July 9, 1964

I believe that the usual practice is to submit a preliminary injunction decree together with proposed findings of fact and conclusions of law. In addition, the order prepared by Marvin contains a number of paragraphs (particularly the last one) that assures its rejection by Judge Tyler.

It seems to me that we should concentrate on getting him to sign strong findings of fact. As you know, one of my associates was about to prepare the necessary papers last week when you suggested that it would be faster if you had a draft prepared which would be submitted to me for the purpose of approval and submission to the court.

Since receiving Marvin's memorandum of July 6th, I have tried unsuccessfully to reach you to discuss the appropriate procedure. To put it bluntly, I do not want Marvin or anybody else to submit an order to the court in my name unless I see the document in final form.

I have granted the defendants an extension until July 16th to answer or otherwise move with respect to the complaint. Unless you have objection, I shall refer further requests of the same nature to you.

Please understand that I am prepared to continue to handle this matter including briefing and arguing any appeal that we decide to pursue, incluing making the necessary motion for the appeal to be heard during the summer.

I am also willing to coopenate with anybody designated by you and discuss all proceedings at every stage. But I am not prepared to have the matter handled by somebody else in my name.

HMS

LAW OFFICES
SCHIFFER & COHEN

BARRY LEE COHEN
GEORGE SCHIFFER

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

AUG 20 1964

August 19, 1964

The Hon. Leonard E. Reisman
Deputy Commissioner
Police Department
240 Centre Street
New York, New York

Dear Commissioner Reisman:

I desire to call to your attention Escobedo v. Illinois 32LW4605 84 S.Ct.1758 (decided June 22, 1964). That case suggests that the practice of New York City Police in denying attorneys access to persons under arrest is unlawful.

In numerous instances involving Civil Rights demonstrators, police have denied prisoners access to counsel and counsel access to their clients both before and after booking. In some cases the refusal to admit attorneys has been directly related to questionable or unlawful activities within the precinct. In light of the recent Supreme Court decision, I expect that Police Department regulations will be suitably modified.

Very truly yours,

George Schiffer

GS:sk

cc: Mr. Carl Rachlin

LAW OFFICES
SCHIFFER & COHEN

AUG 20 1964

BARRY LEE COHEN
GEORGE SCHIFFER

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

August 19, 1964

The Hon. Leonard E. Reisman
Deputy Commissioner
Police Department
240 Center Street
New York, New York

Dear Commissioner Reisman:

I am aware that, under authority not altogether clear to me, the Police Department has from time to time issued regulations. I am unable to find these regulations in any public document.

I would therefore appreciate your sending me copies of all Police Department regulations currently in force. Naturally, I shall be glad to defray any reasonable cost which may be involved. I should also like to be advised of the circumstances in which, or the procedures pursuant to which, Police Department regulations are adopted.

You may recall that I made a similar request some years ago.

Very truly yours,

George Schiffer

GS:sk

cc: Mr. Carl Rachlin

M E M O R A N D U M

CONGRESS OF RACIAL EQUALITY
38 Park Row
New York City, New York 10038
26 August 1964

TO: Carl Rachlin, General Counsel

FROM: Gordon R. Carey, Assistant to the National Director

Re: Bail Bond

Pursuant to our discussion of Tuesday, August 25, this is to remind you that I set up an appointment with Herbert J. Stourz, Executive Director of the Vera Foundation, 30 East 39th Street, New York 16. The telephone number is YU 6-5380. Your meeting with Mr. Stourz on Tesday, September 1 at 10 A.M. is at his office. I hope that you will have had a chance to acquaint yourself somewhat with the Vera Foundation and the Manhattan Bail Project by then.

At this meeting, Mr. Stourz would like to have you bring a run-down on the general bond and legal situation in regard to the World's Fair trials. For example, we would like to know the face amount of the total bond issued, the number of persons involved and the number of charges. We would also like some specific information on the numberous postponements that have taken place and especially those that involve bringing people in from great distances. Mr. Stourz would also like to have two or three specific case histories of out of town defendants whose cases are still pending and who have been required to return at least once for a postponement.

I think it is possible that the Vera Foundation could be extremely helpful in helping us meet a number of our bond situations. For example, they proposed that we prepare an information sheet in advance on each person who is likely to be arrested. The questionairre used by Vera could be used as a model for developing our own. If we get sufficient information about each of the defendants, our chances of getting persons released on their own recognizance should be considerably advanced.

I hope that we can pursue diligently any ideas which may be forthcoming from this meeting. Mr. Stourz is probably more knowledgable in the field of bonding problems than anyone else in the country today, due to his work with Vera.

On September 25, 1964 Judge O'Neil rendered a decision in three U.S. Pavilion cases, acquitting the defendants of violation of §722 on two grounds. Judge O'Neil held that there had been a failure to prove violation of the statute. She also held that the acts proved, which constituted of sit-in outside the United States pavilion and singing, chanting, etc., were constitutionally protected conduct. Ralph Perlberger and Alan Latman, who tried these cases, are to be congratulated. Judge O'Neil's decision is the third, previous ones having been by Judge Rao on strictly factual grounds and by Judge Dubin on both factual and constitutional grounds (Opinion circulated).

Judge Gomez has convicted into cases, after refusing counsel an opportunity to argue the constitutional cases.

The following steps were taken by Messrs. Perlberger and Latman which contributed to the result.

1. They moved, in writing pursuant to the order of the judge who set the cases for the trial date, for separate trials for each defendant. This permitted them particularly to show the judge the contrast between the individual nature of each defendant's conduct and the blurred testimony of the police, who could not really distinguish between the conduct of the several defendants.

2. The separate trials allowed for a cumulative effect in that Mr. Latman was able to cover on cross-examination the same ground, and some additional grounds, covered by Mr. Perlberger further demonstrating the weakness of the police testimony. In general, Captain Brill of the Police Department must be deemed to have been a valuable witness for our side in that he testified as to the number of policemen present, etc, etc. He also made quite clear that in ordering the arrest he was not motivated by a fear of instant disorder or breach of peace.

3. Both Mr. Perlberger and Mr. Latman prepared short memoranda of law, particularly on the constitutional points, which were handed up at the conclusion of the case.

4. The attorneys prevailed upon the Judge to reserve decision sufficiently so that she could read the briefs. The failure of the District Attorney's office to serve answering brief on time suggested inexcusable degree of over-confidence, among other things.

5. Counsel were able to explain to the judge that these cases do involve complex issues of law and that they must not be considered as if they were street corner drunk cases.

6. Counsel did not commit themselves on the possibility of defendants' testifying or the availability of the witnesses until the very end. This meant that the police were never sure, while testifying, to what extent they would be contradicted.

A copy of the transcript in one of the cases is available for inspection by counsel. This transcript is particularly valuable to show the trial technique of the Assistant District Attorney.

Judge O'Neil is a conscientious and courteous judge. The same cannot be said of a number of others. Counsel should be prepared to battle judges like Gomez very hard. Again, judges such as Quinn should be objected to on the ground of personal prejudice.

To win these cases is by no means easy, bearing in mind the uncertain qualities of the judges. So far this year, however, there have been far more victories than dismissals, particularly when counsel were thoroughly prepared and willing to make the judges listen to arguments of a complexity unusual in the Criminal Court.

The cases still pending in Queens have, of course, been removed to the United States District Court for the Eastern District of New York. This removal was necessitated by the factors set forth in the petition and, particularly to intolerable conditions. First, there has been a sequence of procedural oppressions ranging from the events of April 22, to ex-party adjournments granted to the people after the cases had been set peremptorily against both sides. Second, several judges exhibited a degree of pre-judgement and prejudice which could not be tolerated. Judge Gomez, for example, would not permit the introduction of evidence of the kinds specifically referred to by the court in the Edwards case. He further made it quite clear that he was not interested in arguments of counsel, had no patience to listen to them and would not permit counsel to conduct a proper cross-examination. One judge mentioned to a counsel, off the record, that he considered the U.S. Pavilion demonstration to be an insult to the President. Carl Rachlin specifically consulted Lee White, special counsel to the President concerning this matter. Mr. White has given permission to have any judge or District Attorney who has any question about the matter call him for clarification. The President never felt and does not feel that he or the Presidency was insulted by this demonstration. Insult aside, it is obviously irrelevant to the determination, whether or not there was a disorderly conduct if the President deemed himself insulted or not. Another judge stated that if people who have been given the opportunity to plead guilty failed to do so and were subsequently convicted, you would sentence them to jail. This constitutes a plain threat to induce a plea and is on its face illegal. The same judge, for the first time in all of the Queens

The conduct of certain of the judges has been either prejudiced or so irregular as to make the availability of a fair trial virtually impossible. Judge Chassen, for example, has shouted at and otherwise berated a number of counsel. It is impossible to make a consecutive argument to the judge if he interrupts every other sentence not to ask questions but to berate counsel. Judge Quinn, who sits regularly in Queens, has made it clear that he opposes civil rights demonstrations. The evidence of this goes back to his conviction and sentence of Mickey and Rita Schwerner last year.

In sum, virtually all of the counsel who were first brought in contact with the New York City Criminal Court in connection with civil rights cases were greatly disturbed by the conduct of this court in its dealing with ordinary prisoners. In civil rights cases, the degree to which personal opinion affects the outcome of a case in the treatment accorded the defendant and counsel has appeared appalling to many counsel. It is not suggested that all of the judges by any means are unfair, prejudiced of incapable of rendering a fair trial. On the contrary, even judges of a conservative bent, such as Balbach, have been fair and courteous even though their conclusions differ from ours. Nevertheless, since the defendants not only do not control the selection of judges but are subject to the risk of having special judges set for the trial of civil rights cases, as was the case of Gomez, the likelihood of a fair trial is so far reduced as to require removal.

Counsel will be advised of developments promptly by Jules Zalon of this office. I expect to be absent from approximately October 6th to the end of the month. In my absence Jules or Carl Rachlin will be glad to consult with counsel.

Sincerely yours,

George Schiffer

October 8, 1964

PERSONAL and UNOFFICIAL

Hon. John M Murtagh
100 Center Street
New York, N.Y.

Dear Judge Murtagh,

Please forgive my writing to you at this time, but I must express my concern about a situation of apparent unequal treatment before the law. I refer to the release without bail of the parents who demonstrated at the school. Without saying, I raise no objection to the release without bail of the parents involved; this, of course, has no reference to any guilt or innocence they may bear.

What concerns me, however, is the fact that CORE members and friends whose conduct was far less reprehensible than that shown to the parents (no riots ensued from CORE conduct) in the activity yesterday were placed under heavy bail. When the persons affiliated with the American Jewish Congress were arrested, no bail was requested, while the four girls doing precisely the same peaceful activity at the Florida Pavilion were bailed in heavy amounts.

Questions are constantly asked of me, why so? Certainly Mr. Farmer, Mr. Rustin, Rev. Donald Harrington, Mr. Michael Harrington, all personal friends of mine of long standing, have a right to know why they were charged bail. And the numerous college students involved in the World's Fair demonstrations have a right to know why they were forced to stay overnight while awaiting the obtaining of bail. The record of CORE members over the entire United States is such that without bail their presence is assured. Since bail is only to guarantee the appearance of defendants, there is no reason to require it; it is therefore punitive.

In all candor I do not know the answer to these questions, nor can I tell them it had nothing to do with the fact that it was a demonstration for Negro equality. Since the Gideon case more and more we are coming to the realization that the poor, the dispossessed and the children of former slaves do not have equal protection of the law, particularly with regard to matters such as bail. All of us must, as Justice Goldberg has indicated, reconsider our traditional positions on this matter.

Sincerely,

Carl Rachlin

cc: Mr. Farmer
Mr. Rich
Mr. Schiffer ✓
Vera Foundation

Memorandum of conference held on the above date between Assistant District Attorney Harvey Ehrlich, Assistant District Attorney Edward N. Herman, George Schiffer, Esq. and Jules D. Zalon, Esq. re People v. Eric Eisenberg, et al sub nom Eric Eisenberg, et al v. People file #64C886, United States District Court, Eastern District.

This memorandum is dictated in the presence of the above attorneys with reference to the above matters presently pending before the United States District Court, Eastern District.

These matters appear on the calendar of the District Court on November 18th, 1964 for argument on the People's motion to remand. Inasmuch as a determination should be made regarding the advisability of proceeding with the motion at this time or adjourning the motion for a more lengthy period to await the outcome of certain other cases presently on appeal to the Appellate Courts, which cases concern themselves with similar or related matters, it is agreed that the motion should be adjourned to January 13th, 1965.

On that date the motion will either be further adjourned by stipulation or in the event that it is determined by the parties that it is not advisable to await the outcome of these various appeals, a stipulation will be entered into whereby these cases will be remanded to the Criminal Court of the City of New York with the possible exception of cases in which Eugene Brooks or John Burns represent the defendants. If the cases are to be remanded a proposed schedule for dates for trial in the Criminal

Court will be submitted by Mr. Schiffer to Mr. Herman at least two weeks previous to January 13th, 1965 and a mutually convenient schedule will be arrived at.

It is further understood, however, that any proposed schedule will be subject to the approval of the Administrative Department of the Criminal Court of the City of New York. It is further understood that the cases so stipulated will actually be tried on the dates set forth and indicated unless good legal cause is shown.

It is further agreed that efforts will be made to arrive at an expeditious and practical method of trial and considerations given to the possibility of waiving a three-man bench and having the matters tried before a one-man court. This latter is likewise subject to the approval of the Administrative Department of the Criminal Court.

LAW OFFICES
OF
RALPH PERLBERGER

15 PARK ROW
NEW YORK 38, N. Y.
BEEKMAN 3-3676

CABLE: ALCOMINC, N. Y.

December 17, 1964

George Schiffer, Esq.
40 East 49th Street
New York, N. Y.

Re: Howard Epstein

Dear George:

Unfortunately my prediction came true and on December 16th, in Part IIB Queens Criminal Court, Shalleck J read the opinion for the court (Brennan and Caiezzo) finding Epstein guilty. Immediate sentencing got Epstein a suspended sentence. Jules was there and can describe more fully the import of Shalleck's long but ill-considered opinion. It fortunately says nothing that would lead us to believe we had been wrong in our factual and legal assumptions; it merely mis-states the evidence brought out at trial - which the transcript will show in their correct version - and it mis-applies the law to those erroneous facts. An example of the Court's lack of understanding of the issues presented is that Shalleck said that a logical extension of my view of what constitutes an arrest is that every copy must handle an arrestee, leading to inevitable cries of police brutality. An obvious mis-statement of my view, as well as an illogical conclusion of that view. I said and orally, and in my memo of law, that 3 ways an arrest can be effected are words plus voluntary submission, words plus actual custody (handling the arrestee) or words plus actions by the arrestee indicating that he thinks he is in custody. Furthermore, a logical extension of Shalleck's ruling in this case, which says mere words of arrest are enough, is that a cop can whisper the words, or say them knowing that an arrestee cannot hear or understand them, and proceed to slap 1851 on him. A dangerous ruling, which also happens to contradict the existing case law in NewYork.

As you will see, there are many such nonsequiturs in the good Court's opinion, and the record of the trial is an excellent one for appeal - not enough evidence to warrant a conviction, plenty of questionable evidence leading to a reasonable doubt. I understand that Jules is ordering the transcript and filing the notice of appeal, with its attendant papers.

Yours truly,

RALPH PERLBERGER

LAW OFFICES
SCHIFFER & COHEN

BARRY LEE COHEN
GEORGE SCHIFFER

40 EAST 49TH STREET
NEW YORK 17, N.Y.
PLAZA 2-8060

January 6, 1965

Harvey Ehrlich, Esq.,
Assistant District Attorney,
Queens County,
Criminal Court Building,
126-05 HooverAvenue,
Kew Gardens, N.Y, 11415

COPY

Dear Harvey:

In accordance with your request, this will summarize my suggestions with regard to the remaining World's Fair cases now pending in Federal Court.

The remaining cases fall into two groups, U.S. Pavilion cases and Florida Pavilion cases. The charges in these cases are violations of sections 722 and 1851. There was no actual violence in any of the cases.

Under the recent Supreme Court decisions, the remaining possibility that any conviction might be sustained on appeal appears negligible. It is difficult for me to conceive a public reason why these cases should be prosecuted further.

As far as settling the law is concerned, we now have pending appeals from three U.S. Pavilion convictions: People v. Anderson, People v. Epstein, People v. Kalimtiis. These cases involved three convictions on §722 and one conviction on §1851.

In addition, there are now pending the following cases involving civil rights charges:

People v. Collins, §722 and §2036, which I understand you are appealing to the Court of Appeals. People v. Penn, §722, which we are appealing to the Court of Appeals. People

GEORGE SCHIFFER

v. Lawson, §2036 and §722, which Mr. Hogan's office is appealing to the Court of Appeals.

In my opinion, these cases adequately test the law applicable to ai wide range of civil rights activities. These activitiss include sitting-down and blocking entrances; sitting-in in private property; sitting-in in public property or quasi public property; picketing in quasi public property and non-violent, non-cooperation with arrest.

To require forty odd cases to come to trial prior to the determination of these appeals is likely to involve the Court, your office and the defense lawyers as well as the defendants to a considerable amount of unnecessary expenses. We will be bound to appeal convictions because of the ruling in Collins and in the series of Supreme Court decisions. You may very well consider yourself required to appeal to maintain consistency with some of the other cases.

As things now stand, I have every hope that in a fair trial we will win a good many cases. I am personally convinced that we will win on appeal. If all the appellate cases were to go against us, I would certainly have to reconsider my position and, by the same token, if we were successful, I should think that you would want to reconsider whatever technical distinction there may be between the cases. I should not expect that your office would be interested in prosecutions contrary to sound guidelines which appellate courts might lay down. On the contrary, once the law is clarified, I should think that your office would act to curb the police department's unlawful arrest practices.

Consequently, I am suggesting that we hold further trials in abeyance until the outcome of the pending appeals (unless your office prefers to drop the cases at this point).

With kindest personal regards,

Sincerely,

George Schiffer

cc: E. Herman, Esq.
Carl Rachlin, Esq.

January 15, 1965

Mr. William H. Brown
79 Baxter Street
New York, N.Y.

Dear Sir,

Enclosed please find (a) Bail Bond Application; (b)Affidavit and Judgment by Confession; and (c) CORE's check No. 3493 in the amount of $50.00 to cover a $1,000.00 bail bond for Herbert Callender.

Very truly yours,

Carl Rachlin
General Counsel

Enclosures/

CR:hdl

Wed - Zalon

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

COPY

Mrs. Irene Heitner,
84-16, 21st Avenue,
Brooklyn,
New York

Dear Mrs. Heitner:

Your letter of February 9, 1965 was referred to me for reply.

It is my understanding that, at the time of your son's arrest, a $500.00 bond was required in addition to a $50.00 cash bail. CORE posted the first, you posted the second.

Mr. Jasper deliberately defaulted on required Court appearances in order to absent himself on a frolic of his own. Considerable time was lost and even expenses incurred, because of this misconduct. At the time of Mr. Jasper's final appearance, the bail forfeiture was reinstated at the request of Mr. Zalon. To recover the cash bail of $50.00, however, will require an expenditure of time and effort far in excess of the $50.00 involved. In line of the circumstances, I cannot undertake such a useless effort. I suggest that Mr. Jasper, whose deliberate action brought the loss about, be required to reimburse you.

I might add that out of some 300 defendants involved in the World's Fair demonstrations, less than ten deliberately defaulted bail. Among them, a paraplegic residing in St. Louis and certain others for whom the difficulty and expense of making an appearance offered some excuse. These factors are lacking in Mr. Jasper's case.

Very truly yours,

George Schiffer

cc: Carl Rachlin, Esq.

Meeting with Harvey Ehrlich Monday morning, Feb 15, 1965

HE wnats to do something with the cases in the Fed Ct, because he doesn't like seeing them there without anything being done. It's that simple. He suggests bringing them back with stipulation that there be no trials for at least 45 days, and we can negotiate from there....

EHerman doesn't want that, because he doesn't think that the judges will honor any stipluation of that sort. He then "quotes" Vetrano at length, to the eff ct that the cases "will be tried...tha the court is no party to this stipulation" etc,etc.

Then EH notes that the Florida cases are all in one complaint , and thereore suggests that they all be tried at once. I absolutely refused to even consider it. Then EH bowed out, since they're all Part III cases.

HE seemed somewhat sympathetic to our point about tr ing just a few cases, and Joe Wise and Petanato also went alog with it. (of course they had not yet seen the complaint) Now, if Pryor goes along with it, we can try just one or two cases, and leave the rest in the Fed Court for a while longer.

BUT: I then rminded HE that Sklar already was tried and convicted before Balbach, and thatcase is on appeal....therefore, we have a presentation of facts, which was the only reason that HE wanted to bring them back, or so I gather. Hence, we may not need any new trials in order to assure that all the situations will be covered by appeals.

SO: I'll call HE Tues morning, and we'll see just what Pryor says about this little thing.

Eli Cohn syas tht he'll be glad to try any cases which we might bring back , so there's no trouble on that score.

Now, if Pryor goes along with this little plan of mine, we'll have all the rest of the cases tied up for at least another 4-5 months. Happy Fourth of July!

Make File ~~Jack Meyer~~ Bail Bonds (under NAACP/CORE)

3/8

CORE Interoffice Memo

TO: Ed Day
FROM: Carl Rachlin
RE: Bail put up by Harvey Cummings

February 25, 1965

Harvey Cummings, one of our active people, undersigned a $300 bail bond on behalf of Bronx CORE, which has been paid, and Jack Meyer is bugging the daylights out of Harvey. Can we get Jack Meyer off Harvey's back, because Harvey's employer is getting very annoyed.

This is Bronx CORE's bill but, obviously, they are not going to be able to pay it right now and it was, as you know, Judy Howell who precipitated the entire Jack Meyer crisis.

CR:hdl

file

March 3, 1965

Mr. Jack Meyer
130 White Street
New York, N.Y.

Re: Walter Fleshh

Dear Mr. Meyer,

Enclosed are executed bail bond application and Affidavit and Judgment by Confession for a $500 bail bond for Walter Flesch.

Also enclosed is a check in the amount of $25 to cover the fee.

Thank you for your help in this matter.

Very truly yours,

Hannie de Leeuw
Legal Department

Enclosures/

cc: Dr. George Wiley, CORE
- Eric Rosenfeld, Esq.
Poller, Zinsser & Tulin
60 East 42nd St.
New York, N.Y.

Plumbers Union case -
trial for March 10th

Won!

March 4, 1965

$25.00

TODAY

Jack Mayer

Bail bond fee for Walter Flesh (bond of $500)

#10225
March 4, 1965

. Legal - bail

$25.00

Legal

March 18th, 1965

Harvey B. Ehrlich, Esq.
A sistant District Attorney
Queens Criminal Courthouse
125-01 Queens Blvd.
Kew Gardens, New York

Dear Harvey:

Enclosed herewith is the proposed stipulation/clarification/ something which we discussed yesterday morning. The following is a short run-down of the cases severed thus far:

Andy Young was never removed as he was before the Supreme Court on September 2nd;

Paul Jasper was previously removed to plead to disorderly conduct;

Due, Doctor and Gordon were disposed of recently and Adkins, Marshall Brown and Perdu are on their way back presently;

Eugene Sklar is the subject of a separate petition brought on by John Burns, and accordingly is not contained herein. Nine down and thirty-two to go.

I shallkeep in touch with your office and Eli Cohn, and anticipate a hasty disposition of his three cases.

Incidentally, Steve Nagler, my successor in interest, was admitted to practice before the Second Department yesterday afternoon.

With best personal regards,

Jules

JZ/abg
Encl.
cc: Steven Nagler, Esq. ✓

COPY

LAW OFFICES

April 1st, 1965

Clerk
United States District Court for the
Eastern District of New York
225 Washington Street
Brooklyn, New York

Re: Peo. v. Eisenberg, ETAL
64C 886

Gentlemen:

Reference is made to my letter to you dated March 25th, 1965 in which I enclosed a clarifying stipulation for the above entitled action and in connection with Order, dated March 17th, 1965.

Notice is made that two of the defendants on the original removal petition are not accounted for in the March 17th stipulation nor by remand orders.

For purposes of further clarification:

1. Andy Young was, at the time of the removal petition dated September 2, 1964 within the jurisdiction of the Supreme Court of the State of New York and is thereby not before this Court.

2. Eugene Sklar is before this Court by separate petition filed by his attorney John M. Burns, III, Docket No. of which is 64C 917.

All other parties to the original removal petition are either represented by the March 17th stipulation or have been remanded to the Criminal Court of the City of New York for further proceedings.

Very truly yours,

Jules D. Zalon

JDZ/sbg
cc: George Schiffer, Esq.
J.M. Burns, III, Esq.

P. O. Box 758
St. Augustine, Fla.
May 16, 1965

Mr. George Schiffer
40 East 49th Street
New York, N . Y.

Dear Mr. Schiffer:

I recieved your letter today informing me of the dismissal of the cases of which I am very proud.

I am sorry that I will not be able to appear in court on June 1, 1965 unless my trip is financed. I lost my job thirteen months ago because of my participation in the civil rights struggle in this city, and I have not be employed since.

I have charges pending here in St. Augustine that I am hoping will be dismissed.

Sincerely Yours,

Loucille Plummer

Loucille Plummer

May 17, 1965

Eugene Brooks, Esq.
986 Old Country Road
Plainview, L. I., New York

Dear Gene:

Here is a copy of the proposed memorandum prepared by Atkins, Brown & Perdue. Unfortunately it was prepared rather quickly and hence leaves much to be desired. Incidentally, I spoke to George in reference to your request that further cases involving jury trial on misdemeanors must be referred to you.

Cordially,

STEVEN M. EGLER

Encl.

May 24, 1965

Mr. Albert Adkins
739 Gates Avenue
Brooklyn, New York

Dear Mr. Adkins:

I have been trying to get in touch with you for two or threeeweeks now in conjunction with the charges against you arising out of the demonstration at the New York World's Fair in 1964. The District Attorney has agreed to dismiss all charges against defendants who appear in the Criminal Court of Queens County. In fact, charges against Layne Purdue and Marshall Brown, two people who were arrested with you, were dismissed on May 14th. If you had appeared at that time the charges against you would also have been dismissed. But because you failed to appear the judge issued a warrant for your arrest. If you will get in touch with me at once I will arrange to have the warrant stopped and the charges against you dismissed.

CORE has agreed to obtain releases signed by all defendants in exchange for dismissal of the charges. Please, therefore, sign the three enclosed releases before a notary public of the State of New York and return them to me <u>at once</u>. When you have done this I will arrange to have the warrant revoked and your cases dismissed. If you fail to do this you will probably be arrested and held in jail for a day or two. Then you will come to trial on the charges which may not be dismissed.

The District Attorney has also agreed to dismiss

charges against Henry Doktor if he signs releases. Can you help us find him? At any rate, please get in touch with me at PLaza 2-8060 as soon as possible.

Very truly yours,

Stephen M. Nagler

SMN:mac

May 26, 1965

Pricilla Stephens Kruize
P. O. Box 31
Winneva, Ghana,
West Africa

Dear Pricilla:

After no trial but much tribulation, the District Attorney of Queens County has finally agreed to dismiss all charges against persons arrested at the New York World's Fair last year. Your sister Patricia has given me your address so that I might send you three releases which CORE has agreed to submit on behalf of all defendants.

It is necessary that you sign these releases before the American Consel in the city nearest you and send them back to me as soon as possible. It will be helpful, also, if you accompany the releases with a statement to the effect that you are unable to appear because of your present location.

I look forward to hearing from you as soon as possible.

Very truly yours,

Stephen M. Nagler

SMN:dw

P.S.: As we used to say in Malawi, "Mbuye dalatzni Africa."

May 26, 1965

Loucille Plummer
177 Palma Street
St. Augustine, Florida

Dear Loucille:

I received the releases signed by you last week.

By now you should have received a check from CORE to pay for your bus fare to New York. I am really sorry that it will be necessary for you to make this long trip up here.

See you on June 1st at the Criminal Court of Queens County (125-01 Queens Boulevard, Kew Gardens).

Very truly yours,

Stephen M. Nagler

SMN:dw

P.S.: If you arrive early you can reach me at 539-5290 on the evening of the 31st. My office telephone number is PL 2-8060.

GEORGE SCHIFFER
ATTORNEY AT LAW

40 EAST 49TH STREET
NEW YORK, N.Y. 10017

PLAZA 2-8060

May 26, 1965

Mr. Martin Rubin
35-05 90th Street
Jackson Heights, New York

Dear Mr. Rubin:

Sorry that I misinformed you. Your case will be coming up soonerthan I thought -- probably at the end of June. I hope that you will find it possible to remain in New York until that time.

Incidentally, I should mention that it appears likely that all charges against you will be dropped if you appear when you are asked to do so.

Let me know where you stand at your earliest possible convenience.

Very truly yours,

Stephen M. Nagler

Stephen M. Nagler

SMN:dw

PUBLIC SERVICE MUTUAL INSURANCE CO.

NEW YORK, N. Y.

DAMAR, INC.
393 SEVENTH AVENUE
NEW YORK, N. Y. 10001

524-1230

August 4, 1965

C.O.R.E.
38 Park Row
New York, New York

Attn: Steven Nagler, Esq.

Re: Walter Robinson, Bail Bond No. 90A 241830
Principal Amount: $500.00

Gentlemen:

On November 18, 1964 this Company through its duly licensed agent, W. Harmon Brown executed a bail bond in the amount of $500.00 guaranteeing the appearance of the captioned individual in the Criminal Court, New York County, Part 3, to answer charges of Disorderly Conduct. Subsequently, Robinson failed to appear in Court and thereafter the bond was declared forfeited by the Court. This Company is now obligated to pay to the City of New York the sum of $500, the face amount of the said bond.

At the time of the execution of the bond representations were made to our agent that in the event of a forfeiture of this bond, C.O.R.E. would hold the Company harmless. In addition to these representations the indemnity of Jules Zalon was obtained.

This company now looks to both C.O.R.E. and Mr. Zalon for reimbursement of this sum and respectfully requests that upon receipt of this letter someone contact the undersigned with a view toward paying this loss. It would be greatly appreciated if this matter were expedited in order to avoid payment of additional interest to the City.

Very truly yours,
DAMAR, INC.

David E. Flatow
mcf

By: David E. Flatow
Attorney

AUG 18 1965

Enc. 2 chks
$81.95
60.00

CORE Scholarship, Education
and Defense Fund, Inc.
150 Nassau Street, Room 1312
New York, N.Y. 10038

August 17, 1965

Mr. Rachlin,

Enclosed are two checks as follows:

1. Check to your order in the amount of $81.95 covering various expenses of your Southern trip.

2. Check to the order of Queens County District Attorney covering the processing reinstatement of bonds defaults in amount of $3,500. re Gilbert Banks, Rafael DelGado, Lucille Plummer and Priscilla Stephens.

Hope Maynard

Enclosures

World's Fair

December 10, 1965

Lanorres Hobbs
1071 Sutter Avenue
Brooklyn, New York

Dear Lanorres:

The District Attorney of Queens County has finally decided to move to dismiss all charges in the remaining cases arising out of the April, 1964 CORE World's Fair demonstrations. The big day will be Thursday, December 16th.

It will be necessary for you to appear along with all other Florida and United States Pavilion defendants at that time. If it is impossible for you to be present, please call me.

In any case, please sign the enclosed releases before a Notary Public and return them to me at once. I am looking forward to seeing you on Thursday.

Yours for Freedom,

Stephen M. Nagler
Associate to the
General Counsel

SMN:DF
Enc. 3

DISCLAIMER NOTE

This form letter is followed by many identical copies sent to different addressees. (In the case of receipts acknowledging contributions, the amount of the contribution is also specified.) These have not been filmed, but the originals are deposited at the Archives Division, State Historical Society of Wisconsin.

December 20, 1965

Mrs. Mary Jones Gats
177-11 197th Street
St. Albans, New York

Dear Mrs. Gats:

Please take <u>both</u> copies of the enclosed release to a notary public and have him sign them. Also add the place in which Jimmie is stationed and the branch of the service in which he is serving, as well as his rank.

I would appreciate it if you could do these things quickly and send them back to me by special delivery.

Very truly yours,

SNN/cs STEPHEN M. NAGLER

Miss Bonds

June 19, 1966

Carsie Hall, Esq.
115½ North Farish Street
Jackson, Mississippi

Dear Carsie:

Our auditors tell us that you appeared on September 20th, 1963 in behalf of David Dennis. The auditors are not able to tell us what it was for except that $2,000.00 was deposited as bond money. I wish my memory was better so that I could recall precisely what this was for. I would be most appreciative, if you would tell me what your records show, whether the $2,000.00 is on deposit and with whom. Also, I would appreciate any advice you could give me concerning present status of action.

I expect to be in Jackson in about a month and I certainly intend to see you if you are in town.

With kindest regards,

CR/tp

Carl Rachlin
General Counsel

H. Cumm

66 St. Nicholas Place #A-27
New York City 10032
October 24, 1966

Congress of Racial Equality
(National Office)
200 West 135 Street
New York City 10031

ATTENTION: Mrs C. Coleman

RE: FORFEITURE OF BAIL BOND
ISAIAH BROMSON - 3/28/64

GENTLEMEN:

AS PER TELEPHONE CONVERSATION OF FRIDAY, OCTOBER 21, 1966, IT IS SPECIFICALLY AGREED THAT I, THE UNDERSIGNED, WILL RECEIVE FROM YOU (CONGRESS OF RACIAL EQUALITY--NATIONAL OFFICE) THE SUM OF ONE HUNDRED DOLLARS ($ 100.00) FOR A PERIOD OF FIVE (5) MONTHS BEGINNING NOVEMBER 1, 1966 AND CONTINUING FOR A PERIOD OF FOUR (4) CONSECUTIVE MONTHS THEREAFTER; IT BEING UNDERSTOOD THAT PAYMENTS WILL BE MADE BY YOU ON THE FIRST DAY OF EACH MONTH UNTIL THE TOTAL OF FIVE HUNDRED DOLLARS ($ 500.00) IS PAID TO ME.

IT IS FURTHER AGREED THAT SHOULD THE STUYVESANT INSURANCE COMPANY THROUGH ITS NAMED ATTORNEY, OR OTHERWISE, DEMAND A FURTHER PAYMENT FROM ME IN THE AMOUNT OF TWENTY-TWO DOLLARS AND FIFTY CENTS ($22.50) THAT YOU WILL REFUND THIS SAID PAYMENT TO ME ON THE SIXTH CONSECUTIVE MONTH, THEREBY MAKING THE TOTAL PAYMENT TO ME FIVE HUNDRED AND TWENTY-TWO DOLLARS AND FIFTY CENTS ($ 522.50).

IT MUST BE STATED HERE BY WAY OF AN EXPLANATION ON THE TOTAL OF FIVE HUNDRED AND TWENTY-TWO DOLLARS AND FIFTY CENTS ($ 522.50) THAT THIS IS THE TOTAL AMOUNT THE STUYVESANT INSURANCE COMPANY CLAIMS IS DUE THEM; HOWEVER, MR. STEVE NAGLER OF SEDF SUGGESTED THAT SAID STUYVESANT INSURANCE COMPANY MAY FOREGO THE TWENTY-TWO DOLLARS AND FIFTY CENTS ($ 22.50) AND SETTLE FOR JUST FIVE HUNDRED DOLLARS ($500.00). I HAVE NO CONFIRMATION OF THIS FROM THE STUYVESANT INSURANCE COMPANY.

YOU SHOULD BE REMINDED AGAIN THAT THIS AGREEMENT HAS TO DO WITH THE BAIL BOND I POSTED FOR ISAIAH BROMSON ON MARCH 28, 1964 AND WHICH I LATER FORFEITED. I WAS NOTIFIED OF THIS FORFEITURE OCTOBER 18, 1966. I DID IT ALL IN THE NAME AND FOR THE SAKE OF CORE. A CHECK INTO THE CORE RECORDS WILL SHOW THAT I POSTED SEVERAL SUCH BONDS FOR MANY ARRESTED CORE MEMBERS. MESSRS. HERB CALLENDER, SOL HERBERT, HOWARD QUANDER, AND CARL RACHLIN ARE ALL FAMILIAR WITH MY WORK IN AND FOR CORE.

IF THERE IS ANYTHING FURTHER YOU NEED TO KNOW ABOUT THIS MATTER, PLEASE FEEL FREE TO CALL ON ME.

FRATERNALLY YOURS,
H. Harvey Cummings
H. HARVEY CUMMINGS

(MORE)

PS: THIS AGREEMENT WAS NEGOTIATED BY MR. STEVE NAGLER. HE NOTIFIED ME VIA TELEPHONE OF THE RESULTS AND AS MENTIONED BEFORE THIS LETTER IS BEING WRITTEN TO COMPLY WITH REQUEST MADE OF ME BY MRS. COLEMAN PER TELEPHONE CONVERSATION ON OCTOBER 21. ATTORNEY CARL RACHLIN WAS IN ON THIS AT THE INITIAL STAGE.

HNC

COPIES SENT TO:

MESSRS. CARL RACHLIN
" STEVE NAGLER
" HERBERT CALLENDER
" SOL HERBERT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

(here name all the defendants listed on notice page)

Petitioners,

-against-

People of the STATE OF NEW YORK,

CRIMINAL COURT OF THE CITY OF NEW YORK,

and THE CITY OF NEW YORK,

Respondents.

- -x

PETITION FOR REMOVAL

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK:

The petition of the above named petitioners by [redacted] their attorneys, respectfully shows:

On April 22, 1964, petitioners were arrested by employees of the Pinkerton National Detective Agency, and the Police of the City of New York and charged variously with violations of Sections 722, 1851, 1433 and 2036 of the Penal Law of the State of New York. Petitioners were among more than 250 such persons arrested that day, and are awaiting trial in the Criminal Court of the City of New York, County of Queens. Except for defendants Lloyd, Mapp and Farmanian, who have gone to trial on the disorderly conduct charge already (722), no other of the petitioners have as yet gone to trial.

2. The aforementioned actions taken by the City Police and the employees of the Pinkerton National Detective Agency are all part of a conspiracy to deny the civil rights of the petitioners and said proceedings are therefore subject to removal to this court pursuant to the provisions of Subdivisions 1 and 2 of Title 28 U.S.C. § 1443.

3. These proceedings are pending in Parts II-A, ~~&~~ II-B and III under docket numbers_____ of the said Criminal Court.

4. The arrests and prosecutions of petitioners violate the Constitutionm of the United States and the Amendments thereto and the Laws of the United States by making criminal, conduct which is protected by the First and Fourteenth Amendments to the Constitution of the United States.

6. Petitioners herein are denied all rights and cannot secure a fair trial and have no ~~xixixrights~~ rights under the Constitution of the United States in the local courts as illustrated by the following:

5. Petitioners are denied and/~~or~~ cannot enforce in the courts of the State of New York, rights under the Constitution and Laws of the United States providing for the equal ~~xxxxxxxxx~~ rights of citizens of the United States and all persons within the jurisdiction thereof, and/or are being prosecuted for acts under color of authority derived from the Constitution and Laws of the Unted States.

a) All petitioners herein were arrested in connection with a lawful protest conducted at the Florida Pavillion, New York State Pavillion, New York City Pavillion, United States Pavillion and Schaefer Pavillion at the New York World's Fair, and subsequently prosecuted as aforesaid, all in the County of Queens, City and State of New York. Petitioners were lawfully protesting the denial of equal protection of the laws to Negroes in the City, State and Nation with reference to housing, education, employment, police action and

This "regulation" was adopted for the express purpose of denying the constitutional right to picket & express views in public. ~~This picketing demonstration on the said date, & was~~ Despite the peaceful manner of petitioners' demonstration, & was taken it upon itself to enforce their nonexistent regulation; it ordered the arrests, through the instrumentalities of its own "police force" and the willing ~~assistance~~ of the New York City Police Force; & said cooperation thereafter has influenced & aided actively in & transactions arising therefrom. This power to enforce its own "regs" is specifically given & conf. by & aforementioned charter of & Laws of New York, 1963; This constitutes an unlawful del. of police pwr & a fut cooperation & is of course invalid.

other areas of local, and national life too numerous to mention. Petitioners sought equal protection under law for themselves and others similarly situated.

b) Petitioners' conduct uncluded walking pickets and standing pickets, carrying signs and singing freedom songs, all conduct specifically protected under the Constitution of the United States.

c) On information and belief, petitioners were arrested for specifically violating a "regulation" which the World's Fair 1964-1965 Corporation had promulgated, which denied rights that petitioners possessed under the Constitution of the United States, to lawfully picket and express their views in public, and to bring to the attention of the public the outrageous discrimination practiced throughout this nation against Negroes.

d) This "regulation," written under color of authority granted to said Corporation by chapter 892, Laws of New York, 1963, was part of a special code which the statute purported to empower the said Corporation to enact and submit to the City Council of the City of New York; the City Council, if it so approved, could then enact them into a special code of laws governing the area of the World's Fair.

e) On information and belief, these special codes were never enacted by the City Council, and are therefore nonextant. Even if the codes were approved, it would constitute an unlawful delegation of legislative power to a private corporation, in violation of the Constitution of the United States and the State of New York.

a future time J has
been elected Governor of
Iowa this case
case of felony has been tried in
this court before J, who will have
made such rulings as
in this case will be law
before C elected J -
D Judge + counsel of counties
have retired to enter J
2 follow CSC to
Sunday the judge case
E) Jt, Chairman of such place
Q - ???
week or committee - he authorized jail
in Jt of fact or another demo
have been denied entry +
may Jt have time to demand

f) Most of the arrests made on the said date were made by private employees of the Pinkerton National Detective Agency, a private corporation engaged by the Fair Corporation. Since each and every arrest made therein arising out of these lawful demonstrations were made pursuant to section 722 of the Penal Law (disorderly conduct); and since under the Code of Criminal Procedure only public police officers are authorized to arrest for disorderly conduct, the arrests of petitioners by these private employees constitute false arrests.

g) The Pinkerton employees made these arrests under color of authority granted by the abovementioned chapter of the Laws of New York, 1963. If so construed, this chapter violates the Constitution of the United States and the State of New York in that it delegates to a private corporation inalienable police powers of the government, it unconstitutionally delegates the power to appoint to public office to a private corporation, and it denies the public their needed right to control their own public officers, as witnessed by this very situation.

h) On information and belief, the arrests made by the police of the City of New York also were not made in the normal course of their duties, and no arrests were in fact made until specific orders to do so were received by the officers. The police of the City of New York actually admit to their part in this conspiracy to deny the petitioners' rights; viz: Captain Rudolph B. Blaum, Supervisor of Patrol, Borough of Queens, City of New York, the instrument of this conspiracy, has been in court each time a trial has taken place, most recently in the case of People v. Parmanian, and has therein testified to the fact

that he personally gave the orders to arrest the petitioners, and that no arrests were made until that time, as indeed there was no need to do so, since the defendants were not acting in such a manner as to move the police officers to arrest on their own.

i) On being told that they were under arrest, some of the petitioners complied with the orders of their captors and walked to the waiting vans and busses; others simply did nothing and were carried to the vans and busses; still others were lifted to their feet, and thereafter walked ; however none of them in any manner physically resisted either the officers of the Pinkerton employees. Notwithstanding this, nor the fact that many of the petitioners did comply with the orders, each and every of the demonstrators were charged additionally with the crime of resisting a public officer in the performance of his duty. This clearly was a harrassing and punative measure by the World's Fair Corperation for violation of their "regulation," and in no way reflected the actual situation on that day.

j) Some demonstrators were taken to fenced-off areas of the Fair property and others tox a gymnasium, while their arrest cards were being made out, but in time they were all removed to the Queens County House of Detention to await arraignment. Many were kept in detention overnight; many were not given anything to eat the entire time. This was also a measure to dampen their spirits and punish them for engaging in their lawful activity. Furthering the harrassment meated out, on information and belief, many were fingerprinted, although ~~this~~ this is not authorized by the Code of Criminal Procedure for the charges made against them.

k) Attesting to the fact that this was to be no ordinary criminal proceeding, the Chief Administrative Assistant in the New York City Criminal Court, the Honorable LARRY M. VETRANO, personally went to the Queens Criminal Courthouse to supervise the program. Thereafter, the courthouse became the scene of utter confusion, all to the detriment of the defendants, as communication became impossible and processing of the defendants came to a halt. Despite repeated attempts for a conference with Judge VETRANO, both by attorneys for the defendants and the district attorney, Judge VETRANO refused to speak to any of the attorneys, thus further delaying, discouraging and prejudicing the rights of the defendants. Because of this peculiar development, some of the defendants were required to spend the night in the detention cells while their attorneys worked to secure their release, which, for a period of time, was completely frustrated by the harrassing tactics of Judge VETRANO.

1) Judge VETRANO's motives in this x irregular prodeeding became apparent a few hours later when the judges used bail conditions as another means of punishing the defendants and embarrassing the organization spensoring the demonstratâânm. With great consisteney, and despite knowledge by all judges, including Judge VETRANO himself, that these defendants were engaged in a non-violent, peaceful demonstration, nonetheless each sepaate part of the Criminal Court imposed bail on each count of the complaints in most cases; this, despite the fact that civil rights demonstrations had taken place often prior to April 22, the defendants had constantly appeared in court at the proper dates, that bail in the other cases had been either minimal or not imposed, and that

the conduct of the demonstrators was far below any standard which could be called criminal, all of which was personally known to the judged of the Criminal Court, and to Judge VETRANO.

m) That Judge VETRANO knew full well that these defendants were civil rights demonstrators, and that he was personally going to direct the "special treatment" of their cases is shown by this quote by the Judge in the Long Island Star Journal of 4/23/64: "No one is walking out of here to go demonstrating again. Each is being held in bail of some sort."

n) In fact, Judge VETRANO has kept these defendants much too busy "to go demonstrating again" and has attempted to discourage others from similarly demonstrating and exercising their Constitutional rights, by causing the courts to set frequent adjournment dates at short intervals when it was obvious even then that this large body of cases could not possibly be tried until the Fall. This harrassing device forced ~~all of the~~ THESE defendants to appear ~~to this date at least five or six times in court, only to wait all morning to be told~~ as many as when to return; others have to ~~this date appeared~~ eight times and more, many losing their jobs for the numerous absences taken. The district attorney's office itself plainly acknowledged to the court on many occasions that it was not prepared to proceed with the cases, but the courts nonetheless consistently set new dates soon thereafter.

o) This was especially inconvenient to persons who lived as far away as Tennessee, Florida, St. Louis, Montreal, Washington, D.C., Boston and Chicago, but the courts refused to relieve them from

appearance for another obvious adjournment, despite the fact that it has full power to do so. In fact, in another group of civil rights demonstration arrests, presently before this Court, the Criminal Court has nonetheless required each defendant to reappear continually, as many as three times in a single month, despite the fact that that court had no jurisdiction; and it has in addition issued bench warrants and invoked bail forfeitures on those who, in reliance on the removal, did not appear. One such case was actually tried in the Criminal Court, and the defendant convicted, notwithstanding the court's complete lack of jurisdiction. Faced with this continuing harrassment, and rather than suffer further embarrassment, expense and inconvenience, ~~borne out fully by subsequent events~~, many of these defendants decided to plead guilty to disorderly conduct, and end this matter finally.

p) Because of these harrassing tactics, attorneys for the defendants attempted to negotiate a reasonable and orderly disposition of all of the cases; however, Chief Administrative Judge of the Criminal Court of the City of New York, the Honorable JOHN M. MURTAUGH, remained unimpeachable. He continued to remain adamant although it became obvious that the entire series of arrests were woefully inadequate to support convictions, and during June, 1964, more than 100 cases were summarily dismissed and charges withdrawn.

q) Shortly after the said dismissals, Judge VETRANO employed a new device to financially embarrass the sponsoring organization, by taking from the judges the pwer to reinstate bailx when a forfeiture

has been declared, despite the immediate subsequent appearance by the defendant in court. Bulletin # 15 to the judges; Bulletin # 34 to the clerks, issued June 26, 1964. That this scheme was aimed at the demonstrators cannot be doubted, as the great number of them, and the numerous and short adjournments were bound to cause certain absences. By this new procedure, written application within seven calender days had to be made to Judge VETRANO himself, supported by appoppriate proof that the forfeiture "was merely technical in nature." This was subsequently rescinded when it was probably found to be without foundation and illegal.

r) During this time, negotiations were taking place between the district attorney's office and attorneys for the defendants with a view to dismissing all charges against the defendants arrested at the United States Pavillion; and at one point, June 16, 1964, it was understood that the cases were to be dismissed. However, on information and belief, great pressure was exerted from the Police Commissioners own office to the effect that there were to be neither dismissals nor dispositions, and every defendant had to go to trial.

s) ~~Although the district attorney's office was still not prepared to proceed to trial,~~ the courts employed another device to obstruct the eventual defense in these cases and deny the defendants the right to an orderly and normal trial, by lumping great numbers of these cases together on the same day, viz: twenty-four on August 25; eighteen on August 11, despite the obvious fact that most of them could not possibly be tried the same day. Despite the impossible burden this

placed on the court -- as attested by the fact that every one of the August 11 cases had to be adjourned once more -- the court nonetheless again lumped them together for trial on September 2, 1964. From this past experience, it is probable that most of those cases will again have to be adjou rned. On information and belief, this has allowed Judge VETRANO to further his designs for these defendants by scheduling judges without the normal calender, thus enabling him to direct the course of the cases to these specially chosen judges. Thus, on August 25, 1964, when all of the United States Pavillion cases were finally set for trial, unexpectedly and without any prior suggestion, the district attorney's office revived the suggestion that pleas be taken to the disorderly conduct charges only, coupled with the sudden appearance of Judges Creel and Gomez. Judge Creel, sitting in Part EI-B, made it quite clear from the outset that he was planning to impose substantial sentences to any defendant who did not plead guilty to the offense. In giving one defendant so pleading a suspended sentence, he set off on a ten minute tirade in which he insulted the youngster, deliberately misquoted the law, threatened much stiffer punishment than this "rediculously light sentence" to anyone who did not plead guilty, and exacted promises of an illegal nature to the effect that the defendant would not again indulge in this type of demonstration, thus furthering Judge VETRANO's obvious desire throughout the entire history of these cases, to stop civil rights demonstrations altogether.

t) Judge Creel further stated that, although the charge

of resisting a public officer was withdrawn, it was to be considered in imposing sentence as it was obvious that the defendant had so acted; on the contrary, however, the complaint specified that the defendant merely refused to cooperate in his own arrest, and did not use any violence or put up any resistance to the officer. In discussing this aspect of the defendant's conduct, the judge continued to misquote the law by demanding that persons arrested, even illegally, must submit to their captors, and thereafter may make a complaint, when in fact the law is directly to the contrary and a person placed illegally under arrest may use all reasonable force to resist the unlawful act. People v. Richter, 265 App. Div. 767; aff'd 291 N.Y. 161.

u) This so frightened most of the other defendants in the courtroom that, despite their attorneys' readiness for trial, most of them capitulated at once and accepted Judge Creel's "ridiculously light sentence" and acceded to his preposterous promise. As a further punishment, each of the defendants so pleading was ordered fingerprinted, although this is generally waived in cases of this sort. However, with respect to the defendants who did wish to go to trial, the first being on the disorderly conduct charge, Judge Creel sent the cases to a special part of the court in which Judge Gomez was sitting especially to hear these civil rights cases, thus avoiding the Judge and the court which would, under normal circumstances, hear the cases. The judge thus avoided by this careful scheme had heard a small number of there cases, had conducted an extremely fair trial, had allowed submission of briefs at the end of the trials and had reserved

decision. In order to further Judge VETRANO's design, this result had to be circumvented, and it was done by the simple expedient of establishing a "civil rights" part temporarily in the court. One such defendant who pleaded guilty before Judge Gomez that same day was given a $50.00 fine, twice the amount of the next highest fines imposed in this sequence of cases, and larger still than the average fine of $5. to $10. Such punishment imposed by one hand picked by Judge VETRANO to hear these cases attests still further to Judge VETRANO's consistent aim throughout these proceedings, to so harrass and discourage these defendants that they would not wish "to go demonstrating again."

v) The trial before Judge Gomez that day, and the day following, amounted to a total denial of the civil rights of the defendant, and of any semblance of due process, either procedural or substantive, as shown by the following:

The only witness for the prosecution was the arresting officer, who testified that (1) defendant was part of a demonstration, which included carrying CORE signs stating "Freedom Now," "Jim Crow Must Go," etc., (2) the demonstrators stood apart from the rest of the crowd on a parapet, and later in a grass and shrub area surrounding a pool, but still separate from the crowd, (3) they sang songs and chanted loudly and (4) refused to desist after orders from the police, all of which conduct is specifically included and protected under the doctrine of Edwards v. South Carolina, 83 S. Ct. 680 (1963), as interpreted by Fields v. South Carolina, 375 U.S. 44 (1963) and City of Rock Hill

v. Henry, 375 U.S. 6 (1963). Nonetheless, the court found that (1) the defendant was actually attempting to incite a riot, (2) he was not in a civil rights demonstration, (3) the First Amendment was not involved at all in the case and (4) there was a legal distinction between picketing and demonstrating; all of which was clearly contrary to law and fact. In fact, Judge Gomez did not even allow the defense to cross examine the police officer, sustaining objections, without questioning the nature or basis therefor, to the following questions: how many people were present, how many police officers were present, how many Pinkertons were present, was there noise in the crowd, could he hear various bands playing, what were the people in the crowd doing, what else did he hear. Not only were the questions asked proper, but in fact went to the very substanfe of the charge, viz: "circumstances likely to cause a breach of the peace." In fact, these questions, if answered, would have established the factors used by the United States Supreme Court in reversing the Edwards conviction: no evidence of violence or threatened violence; no fighting words; and ample police protection at all times. And Judge Gomez himself, in answer to counsel's argument that the factors determinative in Edwards must be allowed into evidence, stated that the Edwards doctrine was simply not involved in the case. The conduct of Judge Gomez, as well as other judges under the direct control and influence of Judge VETRANO, shows further the continuous insidious nature of the conspiracy to deprive the petitioners of all their civil rights in the Criminal Court. In two related instances, although not arising out of demon-

strationsat the World's Fair, convictions were obtained for disorderly donduct, despite the fact that the only proof was that the defendants were peacefully distributing leaflets on the street.

w) The coufts have not, however, been content to allow the cases before it to proceed in a manner even vaguely resembling due process. Attorneys for two defendants particularly have been subjected to time-consuming delays despite stern admonitions from the bench to the effect that the cases must be readied for trial. On July 9, the assistant district attorney asked the court in part II-B for a substantial adjourmment in order to prepare for trial; Judge Quinn in open court admonished the assistant for not being ready to prodeed, ordered him to to be prepared on the next adjourned date, and cautioned him that he would not tolerate any more adjourmments. The Judge did not, howesr, even at that late date, mark the cases peremptorily against the People. Nor did either of the two courts sitting on the next date, when again the People were not ready &o proceed. The epitome of this harrassment came when, upon information and belief, the court recently adjourned the cases onee more, in the absence of both the attorneys and the defendants. Probably in order to notify one
the defendant he received a subpoena to appear on this new date as a witness at his own trial! Inasmuch as both the defendants and their attorneys have already been ordered to appear on the adjourned known to have been set by the court, this new "procedure" will require two additional appearances, further frustrating justice and harrassing attorneys and clients to the point where defendants are denied their

Constitutional right to a speedy trial. This was not, however, the only irregularity which took place on July 9 before Judge Quinn. The schedules of the three attorneys (for eight defendants) were quite full, and it was asked therefore of the Bench to schedule the cases on dates when the attorneys were able to appear; and also, on information and belief, to allow the three or two cases each attorney had, to be heard on the same day. Judge Quinn, however, set new dates in such an arbitrary manner that each attorney was forced to reappear twice; one attorney had to request a later adjournment as one date was, with Judge Quinn's knowledge, impossible for him; & and another attorney was forced to withdraw completely. Such actions by judges of the Criminal Court not only deny rights of the defendants, but additionally impose severe penalties on the various attorneys, all of whom are donating their services without compensation.

x) Another major part in this scheme is being played by the World's Fair 1964-;965 Corporation, which initiated the non-existent regulation under which the defendants were arrested. The Corporation in fact appeared as Amicus Curiae in a number of cases arguing the validity of the "regulation" and defending their right to prohibit peaceful picketing and demonstrating on that public property. The Fair Corporation's own Pinkerton police so manufactured the facts when testifying that motion picture film was used to flatly contradict their stories. A further instrument in this conspiracy was the Pinkerton Agency itself, as shown by the fact that it too appeared by its <u>own attorneys</u> each time the cases were heard and went to trial.

y) On information and belief, there seems to be a carefully nurtured idea among some of the judges that the demonstrations at the United States Pavillion was in some way disrespectful to the President of the United States. How this idea was spread is not completely known, but it seems to explaim the rather hostile attitudes of some of the judges hearing the cases, especially Judges Quinn, Creel and Gomez. Nothing could be further from the truth; not only were the demonstrations not intended to be disrespectful of anyone, they were not in fact disrespectful, their intent and their execution being a noble tribute and a universal plea for not only understanding but a firm respect for the majesty of the law and the legal process.

z) This is not to say that every judge has been involved in this conspiracy to deny the petitioners' civil rights. To the contrary, when cases have been heard in their normal turn, the dedisions have gone both ways, and no claim is made that every trial judge has already closed his mind to the facts as developed. People v. Harrington, Judge Rae sitting, resulted in a n acquittal; People v. Collins, Lustgarten, Noyes and Rutledge, Judge Balbaek sitting, a conviction, although it is felt that the case turned on an improper reading of Marsh v. Alabama)and is presently on appeal); People v. Lloyd, People v. Mapp and People v. Parmanian, Judge O'Neil sitting, had decision reserved pending submission of briefs; People v. Prinz et al, a closely related situation, Judge Dubin sitting, an acquittal.

However, the arbitrariness with which most of these defendants have been met proves that there is not here simple isolated inconveniences,

but quite to the contrary a concerted effort by powers such as Judges MURTAUGH, VETRANO, and a substantial number of judges of the Criminal Court of the City of New York, the Pilice Department of the City of New York, the World's Fair 1964-1965 Corporation and the Pinkerton National Detective Agency to harrass, embarrass, delay and deprive these defendants of theif civil rights and Constitutional rights of due process and equal protection of the laws.

7. That the activities of petitioners consisted solely in the peaceful exercise of their fundamental rights as American citizens to freedom of speech, freedom of assembly and the right to petition their government for a redress of grievances all of which rights are inalienably guaranteed to them by the First and Fourteenth Amendments to the Constitution.

8. That no bond with good and sufficient surety is required to be filed herewith and that no filing fee is to be collected in connection herewith since this proceeding is criminal in nature.

WHEREFORE, petitioners pray these cases stand removed.

Dated September 1, 1964

Yours, etc.,

GEORGE SCHIFFER, ESQ.
40 East 49th Street
New York, N.Y.

Etc.

Etc.

Attorneys for Petitioner

Jules D. Zalon, Esq.

Of Counsel

1. On April 22, 1964, petitioners were engaged in a lawful ~~demonstration~~, peaceful demonstration at the New York World's Fair. They were arrested with some two hundred others and charged with ~~violations~~ with Disorderly Conduct (§ 722 of the Penal Law) and Resisting a Public Officer in the Performance of his Duty (§ 1851 of the Penal Law). Petitioners were released on bail and are awaiting trial in the Criminal Court of the City of New York.

2. Their disorderly conduct consisted solely of picketing, carrying signs, and singing freedom songs, all of which conduct is specifically within the meaning of the doctrine of Edwards v. South Carolina, 83 S.Ct. 680 (1963). Their alleged violation of section 1851 consisted of refusing to walk to the police vans and busses, but allowing themselves to be carried. Petitioner Young is charged with Felonious Assault because, while being carried by several police officers and beaten, one of the officers allegedly sustained an injury.

3. Certain other petitioners in the demonstration were charged with Intrusion on Real Property (§ 2036 of the Penal Law). Certain of the petitioners have also been charged with other violations of the Penal Law. ~~Except for defendants~~ Lloyd, Mapp and Farmanian, who have gone to trial on ~~which the disorderly conduct~~ charges already, no other of the petitioners have as yet come to trial.

4. The arrests, made by police of the City of New York, and employees of the Pinkerton National Detective Agency, are in violation of the civil rights of the petitioners ~~and~~ and petitioners therefore invoke the jurisdiction of this Court pursuant to the provisions of Subdivisions 1 and 2 of Title 28 U.S.C. § 1443.

5. These proceedings are pending in Parts T-A, T-B and T-C of the Criminal Court of the City of New York under Docket numbers + others

These adjournments have been granted despite strenuous objections by defendants' counsel, and a number have been granted ex parte without notice.

P 6. Petitioners believe that they cannot secure either a fair trial in the Criminal Court of the City of New York, nor rights under the Constitution and Laws of the United States providing for equal protection of the law to citizens of the United States, and are being prosecuted for acts under color of authority derived from the Constitution and Laws of the United States.

P 7. Petitioners do not contend that all of the judges of the Criminal Court are denying the rights of the petitioners. The conduct of the court as a whole, however, leads inescapably to their conclusion:

a) Bail was imposed on substantially all of those arrested despite the fact that this is quite unusual in such cases.

b) Petitioners have been subjected to numerous harrassing tactics , particularly, but not limited to , being required to appear numerous times for the sole purpose of adjournment.

c) From time to time judges have specially been selected for the purpose of hearing these cases and some of the petitionrs have been denied trials on dates and before judges who would have normally heard the cases, solely so that the case would be heard before the selected judges.

d) Rulings and comments of certain judges have indicated an intent not to follow the United States Supreme Court's rulings in Edwards v. South Carolina, as interpreted by Fields v. South Carolina and City of Rock Hill v. Henry, and a tendancy to prejudge the cases. Some of these judges have refused to allow petitioners' attorneys to properly cross-examine witnesses.

e) Petitioners have been threatned that if they do not plead guilty to Disorderly Conduct, they will, if convicted, be sentenced to jail. In point of fact, charges against many of the demonstrators

against many of the demonstrators have been dismissed entirely and many charges have been withdrawn and dismissed.

8. Their activities of your petitioners consisted solely in the peaceful exercise of thie fundamental rights as American citizens of freedom of speech, freedom of assembly and the right to petition their government for a redress of grievances all of which rights are inalienably guaranteed to them by the First and Fourteenth Amendments to the Constitution.

9. That no bond with good and sufficnent surety is required to be filed herewith and that no filing fee is to be collected in connection herewith since this proceeding is criminal in nature.

WHEREFORE, petitioners pray these cases stand removed.

Dated: September 2, 1964

YOURS, etc.,

(3) JOHN M. BURNS III, ESQ.
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Of Counsel:

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

GEORGE SCHIFFER, being duly sworn, deposes and says:

That he is one of the attorneys for the petitioners herein and that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters ~~therein~~, he believes it to be true.

GEORGE SCHIFFER

Sworn to before me this
2nd day of September, 1964

Notary Public

(1)

During this time, negotiations were taking place between the district attorney's office and attorneys for the defendants with a view to dismiss all charges against defendants arrested at the United States Pavillion, and at one point, June 16, 1964, it was agreed that the cases were to be dismissed. However, great pressure was exerted from the Police Commissioner's own office to the effect that there were to be neither dismissals, nor dispositions, and every defendant had to go to trial.

* * *

(2) Judge Creel further stated that, although the charge of resisting a public officer was withdrawn, it was to be considered in imposing sentence as it was obvious that defendant had so acted; on the contrary the complaint specifically stated that the defendant merely refused to cooperate in his own arrest, and did not use any violence or put up any resistance to the officer. In discussing this aspect of the defendant's conduct, the judge continued to misquote the law by demanding that persons arrested, even illegally, must submit to their captors, and thereafter may make a complaint, when in fact the law is directly to the contrary and a person illegally placed under arrest may use all reasonable force to resist the unlawful act. People v. Richter, 265 App. Div. 767; aff'd 291 N.Y. 161.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS
- - - -

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

(here, name all the defendants listed on first page of the papers submitted)

Petitioners,

PETITION FOR REMOVAL

-against-

PEOPLE OF THE STATE OF NEW YORK,
CRIMINAL COURT OF THE CITY OF NEW YORK,
and THE CITY OF NEW YORK, Respondents.

- -x

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN CISTRICT OF NEW YORK:

The petition of the above named petitioners by GEORGE SCHIFFER, one of their attorneys, respectfully shows:

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

GEORGE SCHIFFER, being duly sworn, deposes and says:

That he is one of the attorneys for the petitioners herein and that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters, he believes it to be ture.

GEORGE SCHIFFER

Sworn to before me this
day of August, 1964.

NOTARY PUBLIC

That On April 22,1964, yourpetitioners were arrested by employees

of the Pinkerton Noational Detective Agency and the Police of

the City of New York and charged ~~with~~ variously with violations of Secvtions 722, 1851, 2036 of the Penal Law of the State of New York. Petitioners were released on bail and are awaiting trial in the Criminal Court of the City of New York, County of Queens.

(see M, LL + Fav)

That the aforementioned actions taken by City Police and the employees of the Pinkerton National Detective Agency are all ~~in violation of~~ the Civil Rights of the peritioners herein and said proceedings are therefore subject to removal to this court pursuant to the provisions of Subdivisions 1 and 2 of Title 28 U.S.C. Section 1443.

(a conj. to deny)

That these proceedings are pending in Parts II-B, II-A and III under Docket Numbers _____ of the said Criminal Court

JJ

H Y

That the petitioners herein are denied all rights and cannot secure a fair trial and have no rights under the Constitution of the United States in the local courts as illustrated by the following:

All petitioners herein were arrested in connection with a lawful protest conducted at the ~~World's Fair~~ New York World's Fair, and subsequently prosecuted as aforesaid , all in the County of Queens, City and State of New York. Petitioners were lawfully protesting the denial of equal protection of the laws to Negroes in the City, State and Nation with reference to housing, education, employment, police action and other areas of local and national life too numerous to mention. Petitioners sought equal protection under law for themselves and others similarly situated.

orderly

~~That there were numerous demonstrations taking place at the World's Fair on the said date~~

Petitioners were ~~arrested for taking part~~ in Organized and orderly demonstrations ~~on the said date~~ in Front of the Florida Pavillion, New York State Pavillion, New York City Pavillion, United States Pavillion, Schaefer Pavillion and standing

Petitioners' conduct included walking/pickets, carrying signs and singing freedom songs, all conduct specifically protected under 2 Cases of SC which

The New York World's Fair 1964-1965 Corporation had promulgated ~~a regulation~~ which denied the rights ~~which~~ petitioners possessed under the Constitution of the United States, to lawfully picket ~~at the~~ and express their views in public, and to bring to the attention of the public the outrageous discrimination practiced throughout this nation against ~~Negroes~~ Negroes. This "regulation," ~~was~~ written under color of authority granted the ~~Corporation~~ said Corporation by chapter 892, Laws of New York, 1963,

In fact, ~~the regulation~~ was part of a special code which the statute purported to empower the said Corporation to enact and submit to the City Council of the City of New York, ~~which~~ Council,

THE

(D) Pet. were arrested for viol. of a "regulation" the validity of which they challenge as unconstitutional

if it so approved, ~~such council~~ could enact them into a special code of law governing the area of the World's Fair.

~~In fact~~, these "special codes" were never enacted by the Council, and are therefore nonextant.

Even if the codes were approved, it would constitute an unlawful delegation of legislative power to a private corporation, in violation of the Constitution of the United States and the State of New York.

Most of the arrests made on the said date were made by private employees of the Pinkerton National Detective Agency, a private corporation engaged by the Fair Corporation . Since each and every arrest made on the said date arising out of these lawful demonstrations were made pursuant to section 722 of the Penal Law of the State of New York (disorderly conduct); and since under the Code of Criminal Procedure only public police officers are authorized to arrest for disorderly conduct, the arrests of petitioners by these private employees constituted a false arrest.

The Pinkerton employees made these arrests under color of authority granted by the abovementioned chapter of the New York Laws, 1963. If so construed, this chapter violates the Constitution of the United States and the State of New York in that it delegates to a private corporation inalienable police powers of the government, it unconstitutionally delegates the power to appoint to public office to a private corporation, and it denies the public the needed right to control their own public officers, as witnessed by this very situation.

The arrests made by the police of the City of New York also were not made in the normal course of their duties, but were directed by the World's Fair authorities themselves, and no arrests were in fact made until specific orders to do so were received by the officers.

The police of the City of New York actually admit to their part in this conspiracy to deny the petitioners' rights; viz, Captain Rudolph B. Blaum, Supervisor of Patrol Borough, Queens, City of New York, the instrument of this conspiracy, has been in court ~~on every occasion when~~ each time a ~~trai~~ trial ~~is~~ has taken place, most recently in the case of the People ~~v~~ v. Farmanian, and has therein testified to the fact that he personally gave the orders to arrest the petitioners ~~herein~~, and that no arrests were made until that time, as indeed there was no need to do so, since the defendants were not acting in such a manner as to ~~require~~ move the police officers to arrest on their own .

On being told that they were under arrest some of the petitioners complied with the orders of their captors and walked to waiting vans and busses; others simply did nothing and were carried to the vans and busses, but did not in any manner resist the officers and Pinkerton employees. This is of course their right; there is nothing in our law which requires a person to aid in his own arrest. Notwithstanding this, ~~fact~~ nor the fact that many of the petitioners did comply with the orders, each and every of the demonstrators were charged additionally with the crime of resisting a public officer in the ~~exp~~ performance of his duty. This clearly was a harrassing and punative measure by the World's Fair Corporation for violation of their "regulation," and in no way reflected the actual situation on that day.

yes??

Some demonstrators were taken to fenced-off areas of the Fair property and others to a gymnasium, while their arrest cards were being made out, but in time they were all removed to the Queens County House of Detention, to await arraignment. Many were kept in ~~the~~ detention cells ~~for more than 12 hours~~ overnight, many were not given anything to eat the entire time. This was also a measure taken to dampen their spirits and punish them ~~for~~ for engaging in their lawful activity.

The police of the City of New York actually admit to their part in this conspiracy to deny the petitioners' rights; viz, Captain Rudolph B. Blaum, Supervisor of Patrol Borough, Queens, City of New York, the instrument of this conspiracy, has been in court on several occasions when a xxxx trial xx has taken place, most recently in the case of the People x v. Parmanian, and has therein testified to the fact that he personally gave the orders to arrest the petitioners inxxxx, and that no arrests were made until that time, as indeed there was no need to do so, since the defendants were not acting in such a manner as to xxxxxx move the police officers to arrest on their own .

On being told that they were under arrest some of the petitioners complied with the orders of their captors and walked to waiting vans and busses; others simply did nothing and were carried to the vans and busses, but did not in any manner resist the officers and Pinkerton employees. This is of course their right; there is nothing in our law which requires a person to aid in his own arrest. Notwithstanding this,xxxx nor the fact that many of the petitioners didx comply with the orders, each and every of the demonstrators were charged additionally with the crime of resisting a public officer in thexxxperformance of his duty. This clearly was a harrassing and punative measure by the World's Fair Corporation for violation of their "regulation," and in no way reflected the actual situation on that day.

Some demonstrators were taken to fenced-off areas of the [illegible] to others to a gymnasium, while their arrest [illegible] were being readied, but in time they were all removed to the Queens County House of Detention, to await arraignment. Many were kept in this detention cells for more than 12 hours, many were not given anything to eat the entire time. This was also a measure taken to dampen their spirits and punish them xxx for engaging in their lawful activity.

Attesting to the fact that this was to be no ordinary criminal proceeding, the Chief Administrative Assistant in the New York City Criminal Court, the Honorable LARRY M VETRANO, personally went to the Queens Criminal Courthouse to supervise the program. Thereafter, the courthouse became the scene of utter confusion, all to the detriment of the defendants, as communications became impossible and processing of the defendants came to a halt. Despite repeated attempts for a conference with Judge VETRANO, both by attorneys for the defendants and the district attorney, Judge VETRANO refused to speak to any of these attorneys, thus further delaying, discouraging, and prejudicing the rights of these defendants. Because of this peculiar development, some of the defendants were required to spend the night in the detention cells while their attorneys worked to secure their release, which, for a certain period of time, was completely frustrated by the harrassing tactics of Judge VETRANO.

Judge VETRANO's motives in this irregular proceeding became apparent a few hours later when, with the judges consistency, and despite knowledge by all the judges, including Judge VETRANO himself, that these defendants were engaged in a non-violent, peaceful demonstration, nonetheless each separate part of the Criminal Court used Bail conditions as another means of punishing the defendants and embarrassing the organization sponsoring the demonstration. imposed bail on each count of the complaints in most cases; this, despite the fact that civil rights demonstrations had taken place often prior to April 22, 1964, the defendants had constantly appeared in court at the proper dates, and that bail in the other cases had been either minimal or not imposed, and that the conduct of the demonstrators

was far below any standard which could be called criminal, all of which was personally known to the judges of the Criminal Court, and to Judge VETRANO. ~~This This The fact~~ that Judge VETRANO knew full well that these defendants were civil rights demonstrators, and that he was personally going to direct the "special treatment" of their cases is ~~borne out~~ shown by this quote by the judge in the Long Island Star Journal of 4/23/64: "No one is walking out of here to go demonstrating again. Each is being held in bail of some sort."

In fact Judge VETRANO has ~~attempted to discourage~~ kept these defendants much too busy "to go demonstrating again" and has attempted to discourage others from similarly demonstrating and exercising their Constitutional rights, by causing the courts to set frequent adjournment dates at short intervals when it was obvious even then that this large body of cases could not possibly be tried until the Fall. This harrassing device forced all of the defendants to appear to this date at least five or six times in court, only to wait all morning to be told when to return; others have to this date appeared eight times and more, many losing their jobs for the numerous absences they have taken. The district attorney's office itself plainly acknowledged to the court ~~this fact~~ that on many occasions that it was not prepared to proceed with the cases, but the courts nonetheless consistently set new dates soon thereafter.

This was especially inconvenient to persons who lived as far away as Tennessee, Florida, St. Louis, Montreal, Washington, D.C., and Boston and Chicago, but the courts ~~still required each of the defendants to appear and~~ refused to ~~waive~~ relieve the defendants ~~not to~~ from appearance for another obvious adjournment, despite the fact that it has full power to do so. ~~decide.~~ In fact, in another group of civil rights demonstration arrests ~~arising approximately the same time~~, and which is presently before this court, the Criminal Court has nonetheless required

each of the defendants to reappear continually, as many as three times in a single month, despite the fact that that court had ~~no power to so rule~~ no jdtn; and it has in addition issued bench warrants and invoked bail forfeitures on those who, in reliance on the removal, did not appear. One such case was actually tried in the Criminal Court, and the defendant convicted notwithstanding the court's complete lack of jurisdiction. ~~(cite)~~

Faced with this continuing harrassment and rather than suffer further embarrassment , expense and inconvenience, many [redacted] borne out fully by subsequent events, many of these defendants decided to plead guilty to disorderly conduct, and end this matter finally.

Becuase of these harrassing tactics, attorneys for the defendants attempted to negotiate a reasonable disposition and orderly disposition of all of the cases,; however, Chief Administrative Judge of the Criminal Court of the City of New York, the Honorable ~~JOHN M.~~ MURTAUGH, remained unimpeachable. He continued to remain adamant although it became more and more obvious that the entire series of arrests were woefully inadequate to support convictions, and during June, 1964, more than 100 cases were summarily dismissed and charges withdrawn. [redacted], shortly after the said dismissals, Judge VETRANO employed a new device to financially embarrass the sponsoring organization, by taking from the judges the power to reinstate bail when a forfeiture had been declared, despite the immediate subsequent appearance by the defendant in court. Bulletin # 15 to the judges; Bulletin # 34 to the clerks, issued June 26, 1964. That this scheme was aimed at the demenstrators cannot be doubted, and the great number of them, and the numerous and short adjournments were bound to cause certain absences, ~~of the defendants not to be able to appear at the times.~~ By the new procedure, written application (4 7 calender days had to be made to Judge VETRANO himself, supported by appropriate proof that the

forfeiture "was merely technical in nature." This bulletin was subsequently rescinded when it was probably found to be without foundation and illegal.

Although the district attorney's office was still not prepared to proceed to trial, the courts employed another device to obstruct the eventual defense in these cases and deny the defendants the right to an orderly and normal trial, by lumping great numbers of these cases together for eventual trial on the same day, viz: twenty-four on August 25; eighteen on August 11, despite the obvious fact that most of them could not possibly be tried the same day. Despite the impossible burden this procedure placed on the courts - as attested by the fact that every one of the August 11 cases had to be adjourned once more - the court nonetheless again lumped them together for trial on September 2, 1964. From this past experience, it is probable that most of those cases will again have to be adjourned. This has allowed Judge VETRANO to further his designs for these defendants by scheduling judges without the normal calender, thus enabling him to ~~pick and choose which persons are to hear which cases.~~ direct the course of the cases to these specially chosen judges. Thus, on August 25, 1964, when all of the United States Pavillion cases were finally set for trial, unexpectedly and without any prior suggestion, the district attorney's office revived the suggestion that pleas be taken to the disorderly conduct charges only, coupled with the sudden appearance of Judges Creel and Gomez. Judge Creel, sitting in Part II-B made it quite clear from the outset that he was planning to impose substantial sentences to any defendant who did not plead guilty to the offense. In giving one defendant so pleading a suspended sentence, he set off on a ten minute tirade in which he insulted the youngster, deliberately misquoted the law, threatened much stiffer punish-

ment than this "rediculously light sentence" to anyone who does not plead guilty, and exacted promises of an illegal nature to the effect that the defendant would never again indulge in this type of demonstration, thus furthering Judge VETRANO's obvious desire throughout the entire history of these cases, to stop civil rights demonstrations altogether. This so frightened most of the other defendants in the courtroom that, despite their attorneys' readiness for trial, most of them capitulated at once and accepted Judge Creel's "rediculously light sentence" and acceded to his preposterous promise. However, with respect to the defendants who did wish to have a trial, the first being on the disorderly conduct charge, Judge Creel sent the cases to a special part of the court ~~to where~~ which JudgeGomez was sitting especially to hear these civil rights cases, thus avoiding the Judge and the court which would, under normal circumstances, hear the cases . The judge thus avoided by this careful scheme had heard a small number of these ~~civil rights~~s cases, had conducted an extremely fair trial, had allowed submission of briefs at the end of the trials and had reserved decision, ~~in all the cases~~. In order to further Judge VETRANO's design, this result had to be circumvented, and it was done by the simple expedient of establishing a "civil rights" part temporarily in the court.

As further punishment, each of the defendants so pleading were ordered fingerprinted, although this is generally waived in cases of this sort.

ment than this "ridiculously light sentence" to anyone who does not plead guilty, and exacted promises of an illegal nature to the effect that the defendant would never again indulge in this type of demonstration, ~~xxxxxxxx~~ thus furthering Judge VETHAUS's obvious desire throughout the entire history of these cases, to stop all civil rights demonstrations altogether. This so frightened most of the other defendants in the courtroom that, despite their attorneys' readiness for trial, most of them capitulated at once and accepted Judge Creel's "ridiculously light sentence" and acceded to his preposterous promise. However, with respect to the ~~xxxxxxxxxxx~~ defendants who did wish to have a trial, the first being on the disorderly conduct charge, Judge Creel sent the cases to a special part of the court to where Judge Gomez was sitting especially to hear these civil rights cases, thus ~~xxxxx~~ avoiding the Judge and the court which would, under normal circumstances, hear the cases. The Judge thus

The trial before Judge Gomez that day, and the of the civil rights of the defendant, and day following, amounted to a total denial/of any semblance of due process, either procedural or substantive, as shown by the following:

The only witness for the prosecution was the arresting officer, and he testified that (1) defendant was part of a demonstration, which included carrying CORE signs stating "Freedom Now," "Jim Crow Must Go," etc., (2) the demonstrators stood apart from the rest of the crowd on a parapet, and later in a grass and shrub area surrounding a pool, but still separate and apart from the crowd, (3) they sang songs and chanted lpudly and (4) refused to desist after orders from the police, all of which conduct is specifically included and protected under the doctrine of Edwards v. South Carolina, 83 S. Ct. 680 (1963), as interpreted by Fields v. South Carolina, 375 U.S. 44 (1963) and City of Rock Hill v. Henry, 375 U.S. 6 (1963). Nonetheless, the court found that (1) the defendant was actually attempting to incite a riot, (2) was not in a civil rights demonstration, (3) the First Amendment was not involved at all in the case and (4) there was a legal distinction between picketing and demonstrating; all of which was clearly contrary to law and fact. In fact, Judge Gomez did not even allow the defense to cross examine the police officer, sustaining objections, without questioning the nature or the basis therefor, to the following questions: how many police officers were present; how many Pinkertons were present; was there noise in the crowd; could you hear various bands playing; how many people were present; what were the people in the crowd doing; what else did you hear?

Not only were the questions asked proper, but in fact went to the very substance of the charge, viz:"circumstances likely to cause a breach of the peace." In fact, these questions, if answered, would have established the factors used by the United States Supreme Court in reversing the Edwards conviction: no evidence of violence or threatened violence, no fighting words, and ample police protection at all times. And Judge Gomez himself, in answer to counsel's argument that the factors determinative in Edwards must be allowed into evidence, stated that the Edwards doctrine was simply not involved in this case.

The conduct of Judge Gomez, as well as other Judges under the direct control and influence of Judge VETRANO, shows further the continuous insidious nature of the conspiracy to deprive the petitioners of all their civil rights in the Criminal Court,

In two related instances, although not arising out out of dempnstrations at the World's Fair, convictions were obtained for disorderly conduct, despite the fact that the only proof was that the defendants were peacefully distributing leaflets on the street.

The courts have not, however, been content to allow the cases before it to proceed ~~even~~ in a manner even vaguely resembling due process.

~~In a number of cases, defendants have been prepared for trial~~

Attorneys for two defendants particularly have been subjected to time consuming delays despite stern admonitions from the bench to the effect that the cases must be readied for trial. On July 9, the A.D.A. asked the court in part II-B for ~~an~~ a substantial adjournment in order to prepare for trial; Judge Quinn /in open court admonished the A.D.A. ~~that~~ for not being ready to proceed, ordered him to be prepared on the next adjourned date, and cautioned that he would not tolerate any more adjournments. The Judge did not, however, even at that late date, mark the cases peremptorily against the People. Nor did either of the two courts sitting on the next date, when again the People were not ready to proceed. The epitome of this harrassment came when, upon information and belief, the court recently adjourned the cases once more , in the absence of both the defendants and their attorneys. And in order to notify one of the defendants, he received ~~a~~ a subpoena to appear as a witness at his own trial! on this new date Inasmuch as both defendants and attorneys have already been ordered to appear on the adjourned date /granted by the court, this new "procedure" will require two next following additional appearances, further frustrating justice, and harrassing attorneys and clients to the point where defendants are denied their Constitutional right to a speedy trial.

3

This was not, however, the only irregularity which took place that day. The schedules of ~~two of~~ the (3) attorneys ~~(attorneys in 4 & 4s)~~ was quite full, and it was asked of the Bench to schedule the cases on dates when the attorneys were able to appear; and also, upon info & belief, to allow the three or two cases each attorney had, to be heard on the same day. Judge Quinn, however, set new dates in such a way that each attorney had to reappear twice; one attorney had to request a later adjournment as one date was, with Judge Quinn's knowldg complete impossible for him; and another attorney was forced to withdraw completely. Such actions by judges of the Criminal Court not only deny the rights of the defendants, but additionally impose severe penalties on the various attorneys, all of whom are donating their services without charge.

Another major part in this scheme is being played by the World's Fair 1964-1965 Corporation itself, which initiated the nonexistent regulation under which the defendants were arrested. The Corporation in fact appeared as Amicus Curiae in a number of cases arguing the validity of the "regulation" and defending their right to prohibit peaceful picketing and demonstrating on that public property. The Fair Corporation's own Pinkerton police officers so manufactured the facts when testifying that motion picture film was used to flatly contradict their stories.

A further instrument in this conspiracy was the Pinkerton Agency itself, as shown by the fact that it appeared by its own attorneys at each time the cases were heard, and when they went to trial.

Upon information and belief, there seems to be a carefully nurtured idea among some of the Judges that the demonstration at the United States Pavillion was in some way disrespectful to the President of the United States. How this idea was completely spread is not known, but it seems to explain (rather hostile) the attitudes of some of the judges hearing these cases, especially Judges Quinn, Creel and Gomez. Nothing could be further from the truth; not only were the demonstrations not intended to be dispespectful of anyone, they were not in fact disrespectful, their intent and their execution being a noble tribute and a universal plea for not only understanding but a firm respect for the majesty of the law and the legal process.

This is not to say that every judge has been involved in this conspiracy to deny the petitioners' civil rights. To the contrary, when cases have been heard in their normal turn, the decisions have gone both ways, and no claim is made that every trial judge has already closed his mind to the facts as developed. People v. Harrington, Judge Rao sitting, resulted in an acquittal; People v. Collins, Lustgarten, Judge Balbach sitting, Noyes and Rutledge, a conviction, although it is felt that the case turned on an improper reading of Marsh v, Alabama (and is presently on appeal); People v. LLoyd, People v. Farmanian, Judge O'Neil sitting, had decision reserved pending submission of briefs; People v. Prinz et al, a closely related situation, Judge Dubin sitting, an acquittal.

However, the arbitrariness with which most of these defendants have been met proves that there is not here present simple isolated inconveniences, but quite to the contrary a concerted effort by powers such as Judges MURTAUGH,

VETRANO, and a substantial number of judges in the Criminal Court of the City of New York, the Police Department of the City of New York, the World's Fair 1964-1965 Corporation and the Pinkerton National Detective Agency to harrass, embarrass, delay and deprive these defendants of their civil rights and Constitutional rights of due process and equal protection of the laws.

Wherefore

6:30 AM Law

400 6x9" cards

1- ℓ list = break down ℓ families + get
6-10, must have dates, parties, complaints (docket #s
6-11) ✓ all ℓ lists | see Ed Herman if trouble
add calendar | at least get ℓ families

get lists fr ℓ clerks in ℓ ct rms Bob in get ⅓.
if get ℓ complaints - get ℓ office 3ds - collate
ℓ ℓ list - if conf enuf, get on stencils when
typing ~~apparatus~~ 3 lines After breaking down, give ℓ la. atty
[meet ℓ all atty's on 6:11 / break down ℓ fam + pleas

2- ✓ ℓ c if in cases 6:10 if so come

6-11) → call Janet Johnson ACLU - did she get ℓ 12 copies of ℓ affy brief? if not - get them to her!
got 6-6 needs 6 more

6-11) 3- Morg Friedman (Halpern) ask re forms: certif. of doubt
6:10 PM later in ℓ ~~suit~~ (also where is a SC judge who can sign ex)
or ℓ certif. where ℓ go - what room - where ℓ file etc
+ issue DA-

once is a case, run upstairs + get a S. Ct. judge ℓ sign ℓ forms

4- ~~OK~~ remind ℓ computer print-out business
also - get in touch ℓ Worgen fr ℓ 11th - re ct Ed H.

5- Galamison 4/4 cases Phil Roth, JS
? → get list fr JS re 6/18 dispo, dates, atty's
+ keep in touch
→ give what help JS needs - any

6- 15 Sedr cases JS, McKinney, Mae Tandler

8AM JS has list ___ get - office 6-10 note
atfs on ea case; clgs; when

7- 17 130 St cases Bill Ellis
6-11 → gg'sly has letter & names, dates

6-16 8. Burns office cases Bernice Rogers -
see her - dates, As, + what can we do
at least 2 remand problems

9- 4 Fla cases:
"O" use - note of names + what's happening

10- blank notices of appeals - complete but + names + dates
✓ stat ✓ gg town atty ck
✓ few hundred ± a batch of orders
✓ what ppl signs it usually in some bldg
(rules of S. Ct. in Tuscon
(C.P.A. set
✓ set up affidavits WF cases
subst. const issues
excessive sentence
also need $2500 cash for Val Colonna

11- need @ $2500 cash & fries (Val Coleman)
@ $100 & 4 possible $5 fries

6-16 or did we? 12- need 3 reams of red stripe paper
for 2 cert.s of $ doubt

13- "notification" -
must send out ∫ Monday
2 get Ss to 2 atty.s
✓ 7 Arts people to address envelopes

re out of townens: give specially to CR or someone

6:11 atch 14. → ✓ get 111's docket back directly &
2 40 add people to docket #s
Jenny Brown say he's contain
most of them & done — just
not in 2 alphabetical list on front desk —

then get on check 2 complaints & find out
which families 2 Ss were arrested in —

then get going back & office ∫ 12:00 latest
+ get 2 stencil working (& 2 atty. pay) —

(also ✓ Farmer $300, $305 wf 2 dates?
6-17, 6-19

complete in I-A + III only till 6-17

"O" might I-B ugh -- get!

Defaulters

Part III

1139 Clayton Harris

1122.4 M. Owens

1430 D. Pollack

? 977 S. Watts

1109.10 Louis Davis

1300.16 M. Brown reinstated

1310, 26 L. Blemmer

? 1005 M Lee Renegar

? 1194 Timms

6-17 — Verla Bell

— Paul Davis

— Patrick Brogan reinstated

called 6-19 — James Clark Jr. — B 2394 / 2494 — 3A E Bay E. S.P. HO — TOURNOP

— Stanzyzake

Lucy Davis reinstated

J. Gaston

R. Delgado

Part I-B

exact reading yet

Jayson (6-17)

2569. J. Perry

2505 - Z Hall

2587 B. Wakefield

2568 - ? Louis Ford

T. Jones

2555 ? Stelling

— Tom Bieber

? Alpar

J. Rose

— Kidman

Zinn — reinstated

— Hallbahn — "

— Durham — "

Adler — "

Butler reinstated

— Goane — reinstated

Nappen (72nd Subj)

Weinstock — reinstated

Bonnie Binder

Geneva Young

Herbert Hand

credit card #: 752-8060 / H-72

1. Adler, Ellis - WS E105 - TR6-1084 — get him
2. Amlin, P. na wife — pavillion ~~xxxxx~~ — date
3. Alper, Donald — pavillion — address — get him
4. ~~Chernofsky, Dan.~~ dism — pavillion — date
5. Davis, Ivey Grad. 6-25 — ~~pavillion~~ — #
6. Davis, Loria na wife — address — get her
7. Davis, PaulBF unmarr'd — pavillion — get him
8. Eisenberg, Eric — pavillion — what happened
9. Ferguson, E. unmarr'd wife — pavillion — date — what goes
10. Smith-Green, Ed. — date — what goes
11. ~~Hardy, Herbert~~ dism 6-17 — date — what goes
12. Harris, Clayton Mar'd to ## — what goes
13. Jasper, PaulBF ~~6-11 note~~ na/wife but cant get in UN6-2289. — get him
14. Jones, Taylor BF? — address — what goes
15. Katz, Jeffrey (and father)(Dravich, Chernof, Winters) — what happened
16. Levy, Builder — pavillion — what happened
17. Phillips, Mod. — pavillion — address — date — # — get her
18. Schultzmr, Martin — pavillion — address — date — # — what goes
19. Starzynski, SueBF — pavillion — in Europe.....nu?
20. Streator, George — pavillion — date — # — what happened
21. Widman, Donald BF? Grad'd — get him
22. Young, Geneva BF? — what happened
23. Bulkin, Joel (VS) due 6-22 [1163] 1033 P2 — 18 yr old — just after fall 7-2 — ~~what happened~~

Einhorn → gd 8/25 fine 6/19 + that's that!

Wm James 2657 Hemick Rd - ??
Jim Oleinen TR3-5999 ??

Jack Rosnick 208-22 Bandwell Dr 2?

Chuck ? unobtainable

MSS
346 SEDFRE M64 WORLD'S FAIR CASES (INFO. RE DEFENDANTS)

State Historical Society of Wisconsin

Please Retain Original Order

CORE - World's Fair Project

the following abreviations are used

BW = bench warrant
BF = bail forfeiture
PR = parole revoked
3 = transferred to part III

DOCKET NUMBERS B2346 ~~B25~~
through B2596 ~~are~~ are scheduled for trial

June 1, 1964. These are the Shaeffer Pavilion people, and their names and docket numbers appear on the Xeroxed lists — excepting the minors, those under 18.

Sample card,
to aid in deciphering
others.

JONES, Ima Sample (Name)
34 E 42ND NYC
BF BW
3

Docket No.:
BXXXX
B has been left off in Ms. Copy.
4/25 ~~64~~

This means Ima Sample Jones, of 34 East 42nd St., N.Y.C., has been reassigned to part III and has forfeited his bail for not showing up on the 25th of April, for trial. There is a bench warrant out for his arrest.

(ASGERSSON, EVLA)

Ageirsson, Erla

245 East 110th St

2237

6/3

Ageirsson, Erla

see 2237

2238

6/3

Alexander, Susan

125 East 106th St.

2276

5/25

Alexander, Susan 2277

5/25

See 2276

Alper, Donald 2322

275 Babcock Hall, Boston, Mass. 6/11

~~##~~ Alper, Donald 2323

See 2322 6/11

Banks, Gilbert 2210

319 Nostrand Ave.; Bklyn, N.Y. 5/25

Banks, Gilbert 2211

5/25

see 2210

Baron (RR), Jerry 2245

5000 Bway 5/22
N.Y.C.

Bonner, Rebecca 2257

see 2256 6/12

Bonner, Rebecca 2256

46 West 90th St
N.Y. 6/12

Braverman, Jan 2280

See 2279 6/5

Braverman, Jan

593 Shore Road

Somers Pt., NaJersey

2279

6/5

Brown, Claudia

209-35 112th Ave.

Jamaica, N.Y.

2304

5/28

Braon, Claudia

209-35 112 Ave.

Jamaica, N.Y.

2309

5/28

Callendar, Herbert 2234

755 East 168th St. 6/8

Callendar, Herbert 2235

see 2234 6/8

Clark, John 2337

University of Rochester 6/15

Cook, Ronnie

611 East Sixth St.
N.Y.C.

2283

5/27

CONWAY, Dorothy

111-04 204 St.

2240

5/28

Clark, John

See 2337

2339

~~5/18~~ 6/15

DANTZLER, Thelma 2314

187-22 Keyville 5/26
Queens, N.Y.

Dantzler, Thelma 2315

5/26

187-22 Keyville
Queens, N.Y.

Cook, Ronnie 2284

See 2283 5/27

Doe, John 2231

see 2232
2233 6/19

Real Name maybe "Owen Hurst"
or "Owen Hirst"

Delgado, Rafael A. 2228

See 2227 5/18/64
BF BW

Delgado, Rafael A. 2227

210 E. 102 St 5/18 PRBW
NY 29

Dukes, Nelson C.

30 39 Edson Ave, Bx, N.Y.

2206
Brooklyn (?)
Atty: Mr. John E. Silverberg
15 Park Row

~~5/4/44, 5/18/44~~ 6/23

Doe, John

See 2231
2233

2232

6/19

Doe, John

See 2231
2232

2233

~~6/14~~ ≠ 6/19

~~might be 6/19~~
~~the writing was illeg.~~

Farmer, James 2305

165 Park Row (38) 5/28
N.Y.C.

Einhorn, Carl 2329

see 2328 6/10

Einhorn, CARL 2328

68 Montague, Bklyn 1, N.Y. 6/10

Flesch, Walter 2208

527 E 12 St, N.Y.C. 6/2

Ferguson, Earthline 2226

121 W. 123 St 5/22

Farmer, James 2300

165 Park Row 5/28
N.Y.C.

Fruchter, Norman D. 2267

5/22

See 2266

Fruchter, Norman D 2266

188 Sixth Ave 5/22
N.Y.C.

Flesch, Walter 2209

see 2208 ~~5/15~~

6/2

Gilmartin, Allen

2310

250 Mount Vernon Place
Newark, N.J.

6/9

Gethers, Joan

2319

See ~~22~~ 2318

6/11

Gethers, Joan

2318

1452 Wilkens Ave., Bronx, N.Y.

6/11

Gordon, Paula 2275

5/25

See 2274

Gordon, Paula 2274

2050 Second Ave. 5/25

Glover, Gular 2297

204-12 100th Ave ~~Hollis~~ 5/5 PR BU

Hollis, N.Y.

Green, Ernest

397 First Ave.
N.Y.C.

2301

~~2301~~
5/28

Gould, Paul

- See 2342

2343

6/10

Gould, Paul

86 Seneca Street
Binghamton, N.Y.

2342

610

Greenberg, Michael

2293

6/16

See 2291

Greenberg Michael

2291

6/16

2254 3rd St

East Meadow, L.I.

Green, Ernest

2306

397 First Ave.
N.Y.C.

5/28

HAHLBOHM, William

2341

5/18 BF BL

See ~~234~~
2338

Gruzen, Marjorie

2333

See 2332

6/2

Gruzen, Marjorie

2332

437 East 12th St.

6/2

Harris, Mary

2244

5/20

see 2242

HARRIS, Mary

2242

5/20

9 Hemingway Ave.
New Rochelle, N.Y.

HAHLBOHM, William

2338

5/18 BF BW

refused to give any other information.

Hewitt, Sara ("SARAH?") 2281

3350 Perry Ave, 5/26
Bx., N.Y.

Heifetz, Henry 2255

5/25

see 2254

Heifetz, Henry 2254

39 W 87th St. N.Y. 5/25

Horowitz, Rachelle

2308

5/28

311 West 24th Street
New York, N.Y.

Horowitz, Rachelle

2303

311 West 24th St.
New York, N.Y.

5/28

Hewitt, Sara

2282

See 2281

5/26

Keith, Frances

25 W 110 St
N.Y.C

2264
6/9

Jackson, Blyden

See 2316

2317
5/22

Jackson, Blyden

81 East 125th St.
N.Y.C.

2316
5/22

Kerr, Eva 2251

6/9

See 2250

Kerr, Eva 2250

129 Suffolk St.
NYC.

6/9

Keith, Frances 2265

See 2264

6/9

Komatsu, Kit

137 East 12th St.
N.Y.C.

2334
6/2

Kinsler, Michael L.

740 Noble Ave.
Bronx, N.Y.
72

2327
5/28

Kinsler, Michael L.

740 Noble Ave.
Bronx, N.Y.
72

2326
5/28

Larsen, Rob't 2324

721 East 6th St.; Apt 1E 5/22
N.Y.C.

Koplin, Philip 2207

279 Henry 5/25

Komatsu (4), kit 2335

See 2334 6/2

Lippert, Marla 2252

6/12

48-36 190 St.
Flushing, N.Y.

Lippert, Marla 2253

See 2252 6/12

Larsen, Robt. 2325

5/22

See 2324

Madison, Wm. Jr., 2236

115-47 196 St. 6/10
St. Albans

Ludwig, Gilbert 2259

see 2258 5/21

Ludwig. Gilbert 2258

4 South ~~Kinderhook~~ Kinderkmack Rd. 5/21
Montvale, Bergen Co., N.J.

Murphy, Maureen 2241

120 E Fourth St. 5/20

Martinez, Nicasio 2290

5/28

See 2289

Nicasio Martinez 2289

224 Edgecomb Ave. 5/28
N.Y.

~~MAYR~~ Myers, Robin 2263

5/22

See 2262

Myers, Robin 2262

2075 Second Ave,
Brooklyn, N.Y.

5/22

Murphy, Maureen 2243

5/20

see 2241

Nazzper, Marjorie 2214

6/2

see 2213

Napper, Marjorie 2213

178 AMITY (?) St. 6/2
Brooklyn, N.Y.

McCormack, Robert 2311

3150 Broadway 6/9
N.Y.C.

PALMER, Christine 2312
St. Albans 5/21

Palmer, Christine 2313
St. Albans 5/21

Napper, Marjorie 2215
6/12
see 2213

Pauly, Joan

2285

5/20

1264 Amsterdam Ave.
N.Y.C.

Patterson, Susan

2287

5/20

See 2286

Patterson, Susan

2286

5/20

134 W. 15th St.
N.Y.C.

Peirce, Judith T. 2261

See 2260 6/10

Pierce, Judith J. 2260

970 East 224th St 6/10

Bronx 66, N.Y.

Pauly, Joan 2288

See 2285 5/20

Powsner, Bruce 2220

6/9

see 2219

Powsner, Bruce 2221

6/9

see 2219

(POSNER)
Powsner, Bruce 2219

~~2~~ 15 Eighth Ave
NYC

~~2219~~

6/9

Reyes, Helen 2295

229 East Fourth St. 5/28

N.Y.

Reer, Karl V. 2294

6/16

See 2292

Reer, Karl V. 2292

6/16

868 Lincoln Place
Teaneck, N.J.

Rice, Kenneth

2217

see 2216

6/2

Rice, Kenneth

2216

193 Grafton St

6/2

REYES, Helen

2296

5/28

See 2295

Roti, Vincent 2225

14-46 142ND St. 5/22
Whitestone

Rose, Janet 2278

3925 17Th Place, N.E., 5/15 -
Washington, D.C. BF BW

Rice, Kenneth 2258

6/2

See 2216

Schmidt, Thos. 2320

507 W. 113 St. 6/8
N.Y.C.

Scott, Robt. C. 2230

1031 E 212 St. 5/12/ — Acq.
Bx., NY.

Rustin, Bayard 2298

340 W 28th St 6/1
N.Y.C.

Sutliff, Ralph (Sutliffe, Jack) 2239

840 Grand Concourse 6/19

NB.: additional note in docket bk under address: "HOLLIS"

Schwarschild (N?), Henry 2299

4 Alan Place
White Plains, N.Y.

Schmidt, Thos 2321

See 2320 6/8

Taylor, Saundra 2268

106-52 160th St. 6/11

Taylor, Frances 2272

6/11

See 2269

Taylor, Frances 2269

106-56 160th St. 6/11

Thompson, John

See 2344

2345

6/10

Thompson, John

Knapp Hill Road

Castle Creek, N.Y.

2344

6/10

Taylor, Saundra

See 2268

2271

~~6/11~~

6/11

Widman, Donald

2246

5/15 BW

193 Second Ave.
N.Y.C.

Weinstock, Rosalind

2273

6/11

See 2270

Weinstock, Rosalind

2270

119-14 Union Tpke.

6/11

Wilson, Theodore

See 2230

2331

5/21

Wilson, Theodore

1591 Bruckner B'Lvd.
Bronx 72, N.Y.

2330

5/21

Widman, Donald

See 2246

2247

5/15

BF BW

Zagarell, Allen

2336

6/11

175 Rivington St.
New York, New York

Wright, Alberta

2307

5/28

184-22 Keesville Ave.
Queens, N.Y.

Wright, Alberta

2302

184-22 Keesville Ave.
Queens, N.Y.

5/28

Zagarell, Michael

2223

6/9

see 2222

Zagarell, Michael

2224

6/9

see 2222

Zagarell, Michael

2222

6/9

1246 Morningside Ave.
NYC

Zagarell, Allen

2340

6/11

See 2336

BEDFRE 1964 WORLD'S FAIR CASES (LISTS OF DEFENDANTS AND NOTES)

State Historical Society of Wisconsin

Please Retain Original Order

Complaint prepared by .....

Adjourned to ..... Bail $ .....

at Part .....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law

.....
Date *Judge*

NATALIE ALSTON
COURT REPORTER

Adjourned to 11/10 Bail $ Pa

paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

OCT 22 19[illegible]
Date *Judge*

FRANCIS X. O'BRIEN

adjourned to ..... Bail $ .....

.....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

.....
Date *Judge*

PAID
FOR 11/10

FINE PAID

Date ..... Amount $.....

Collected by .....

Fines Book Entry by .....

Docket Book Entry by .....

Week-end/Night Part Docket ✓ | Docket C11355

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part 3 County of NY

THE PEOPLE of the STATE OF NEW YORK
on the Complaint of

.....

vs.

W Sprouse

Defendant arraigned 6/1 19 64

Ion .....
Judge.

GRUNITZ
Officer and Shield No.

10 PCT
Assignment

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone

.....
Judge.

Defendant pleads ..... GUILTY

Date ....., 19.....

.....
Judge.

Tried and found ..... GUILTY

Date ....., 19 .....

.....
Judge.

SENTENCE

Fined $..... or in default of payment, imprisonment not to exceed.....day in Workhouse.

Committed to Workhouse for ..... days

.....
Judge.

Complaint prepared by .....

Adjourned to Sept 4 Bail $ PC

Part Ct trial all

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

SEP 4 1964 REUBEN LEVY
Date

Adjourned to Oct 19/64 Bail $ PC

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date

Prob. Dept. & Firepl. Bureau Notified

Adjourned to

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Continued to Tuesday 10/27

ORDERED: BENCH WARRANT ISSUED AGAINST DEFENDANT

OCT 19 1964

FINE PAID

Date 10/19/64 Amount $ 50

Collected by

Fines Book Entry by

Docket Book Entry by

ALEJANDRO GONZALEZ
COURT REPORTER

Week-end/Night Part Docket C11353 | Docket C11356

10/19

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part 1 County of .....

THE PEOPLE of the STATE OF NEW YORK
on the Complaint of

K. Abel POLICE DEPT. RECORD ATTA
S Gordon
vs.
W Sprowel POLICE DEPT. RECORD ATTA
I Lanier

Defendant arraigned 6/1/64 19 ....

Ion. .....
Judge.

Gruntz
Officer and Shield No.

5
Assignment

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone

.....
Judge.

Defendant pleads All Ap Not Guilty GUILTY

Date .....
Judge.

Tried and found Ap Abel, Lanier Not Guilty GUILTY

Date .....
Judge

SENTENCE

Fined $ ..... or in default of payment, imprisonment not to exceed ..... days in Workhouse

Committed to Workhouse for ..... days

.....
Judge.

SEP 4 1964 REUBEN LEVY

ALEJANDRO GONZALEZ
COURT REPORTER

R Fel

Week End/Night Part
Docket 11,553

Docket C 113556

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 3, County of New York

THE PEOPLE of the STATE of NEW YORK
on the Complaint of

Ptl Raymond Grunitz 10 Pct

1. Katherine Abel vs. F 19
2. Stephen M. Gordon M 23
3. ~~William Sproul~~ ~~M 29~~
4. James Lodian M 36

Defendant Arraigned 6/17 19 1964

Hon. Judge.

Ptl Raymond Grunitz 23220
Officer and Shield No.

10 Pct
Assignment.

The defendant on being brought before me was informed of the within charge of Added 722 B Pl
DISORDERLY CONDUCT

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

JUL 1 1964 NICHOLAS F. DELAGI

Defendant pleads NOT GUILTY

Date JUL 1 1964, 19

NICHOLAS F. DELAGI

Tried and found GUILTY

Date, 19

Judge.

SENTENCE

Fined $ or in default of payment, imprisonment not to exceed day in Workhouse.

Committed to Workhouse for days.

Judge

Complaint prepared by

Adjourned to 6/15/64 Bail $

PART 3

Defendant was advised pursuant to Section 1694b of the Penal Law.

6/1/64 Date

1964 NICHOLAS E. DELAGI Judge.

Adjourned to Bail $

Upon the defendant was advised pursuant to section 1694b of the Penal Law.

JUN 15 1964

MABEL A. GOLDZ Judge.

Adjourned to 7/21/64 Bail $

Paroled, the defendant was advised pursuant to Section 1694b of the Penal Law.

JUL 8 1964

MAURICE H. GREY Judge.

Date 9/3/64

SEP 9 1964

JUL 21 1964

REUBEN LEVY

ERWAN WEINKRANTZ

B. A. REC'D PAPERS

FINE PAID FOR 722, 9/3

Date Amount $

Collected by

Fines Book Entry by

Docket Book Entry by

TIMMY LOKATAS
OFFICIAL COURT REPORTER

ANWEILER BROTHERS
OFFICIAL COURT REPORTERS

Form ... 913340

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 3, County of New York

STATE OF NEW YORK,
COUNTY OF New York } ss.:

Pt1 Raymond Grunys 23 220 10 Pct being duly sworn, says that at 1. 40 P. M. on May 29, 19 64 at in front 351 W. 18 St. [Charles Evans Hughes H. S.) in the County of New York, City and State of New York, the defendants Katherine Abel, Stephen M. Gordon, William Sproual and James Lanier and an adolescent also arrested; Summoned

Section 722 B PL added direction of ADA Foley 6/15/64

committed the offense of disorderly conduct in violation of Section 722, Sub-division 3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendants loitered about and obstructed the sidewalk to the annoyance of passersby and failed to move on when requested to do so by the deponent who made about ten requests that they move; that they did loiter thereat, a public School, Charles Evans Hughes High School, without the permission of the custodian or other person in charge thereof; that the defendants are not students thereof, nor parents or guardians of students in regular attendance thereat.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
June 1, 19 64

Judge.

Pl. Raymond Grunz

Pending Leaves: (see R & P 14/26.0)
Vacation 11/ 28/ to 12/ 25/ 1964
Other Leave:

1/10 as to Sprowal I&S (C11355)

Complaint prepared by .....

Adjourned to ..... Bail $.....

at Part .....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

....
Date *Judge.*

adjourned to ..... Bail $.....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

....
Date *Judge.*

adjourned to ..... Bail $.....

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

....
Date *Judge.*

DISORDERLY CONDUCT

FINE PAID

Amount $.....

by .....

Clk Entry by .....

Clk Entry by .....

E. WEINBERG

Week End/Night Part Docket 1064 Docket C1353/56

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 10, County of New York

THE PEOPLE of the STATE of NEW YORK
on the Complaint of

K. Abel
B. Gordon
W. Sprowal
J. Lanier
vs.

Defendant arraigned 6/1/64 19....

Hon. .....
Judge.

Gruntz 10 Pct.
Officer and Shield No.

(7)
Assignment.

The defendant on being brought before me was informed of the within charge of

DISORDERLY CONDUCT

of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

.....
Judge.

Defendant pleads .....GUILTY

Date ....., 19....

.....
Judge.

Tried and found .....GUILTY

Date ....., 19....

.....
Judge.

Refiled (AS TO SPROWAL DOCKET C11355)

SENTENCE

Fined $..... or in default of payment, imprisonment not to exceed .....days in Workhouse.

Committed to Workhouse for .....days.

.....
Judge.

PART 3
NOV 10 1964
NEAL P. BOTTIGLIERI

Opathoshu
Pearson

105
90

ARRESTS

Michael Greenberg	Jeffry Mithhell	Sue Slcewwyski
Mike Padwee	Beth Mitchell	Annette Zelman
Jacques Marchand	James Farmer	Al Zagarell
William Miller	Bayard Rustin	Eliot Kewin
Jan Braverman	Donald Harrington	Mary Harris
David Crouner	Michael Harrington	Will Jones
Russell Mortin	Tom Kahn	Sara Hewitt
Joshua Rose	Rochelle Horowits	Joel Weiss
Peggy Terrell	Robin Meyer	Marla Lippert
Frederika Canada	Robert Larsen	Joan Pauly
Joseph Kern	Barbara Reiner	Joel Rosinsky
Reynold Ruffin	Ernest Green	Lee Jean Parlin
Elinor Lerner	Tim Bieber	Bill Miller
Andrew McLaughlin	George Budabin	Felicia Bonner
Eugene Sherman	Margerie Gruzen	Gilbert Ludwig
Abraham Bassford	John Sleatkin	Maureen Magm Murphy
Eileen Richards	Norman Sleatkin	Maureen Petersen
Bill Mahlbohn	Bob Gabrielsky	Carolyn L[V]mus
Carol Reddick	George Strader	Bill Beatman
Norma Wagner	Eva Kerr	Jim Jones
Carol Lawson	Henry Herberts	Sandra Taylor
John H. Clark	Norman Frichter	Frances Taylor
Bill Forbes	Stan Weidman	Roselyn Weinstock
Kathleen Kehoe	Ronald Bower	Marty Ruben
Robert Harris	Kit Kalmatsu	Andrew Young
Irene Perestman	Dennis Moro	Joe Lewis
Dorothy Fielding	Robert Jaffe	Pat Walker
Robert Miller	Byron Ruskin	Jorgia Boidossky

Kent Thompson

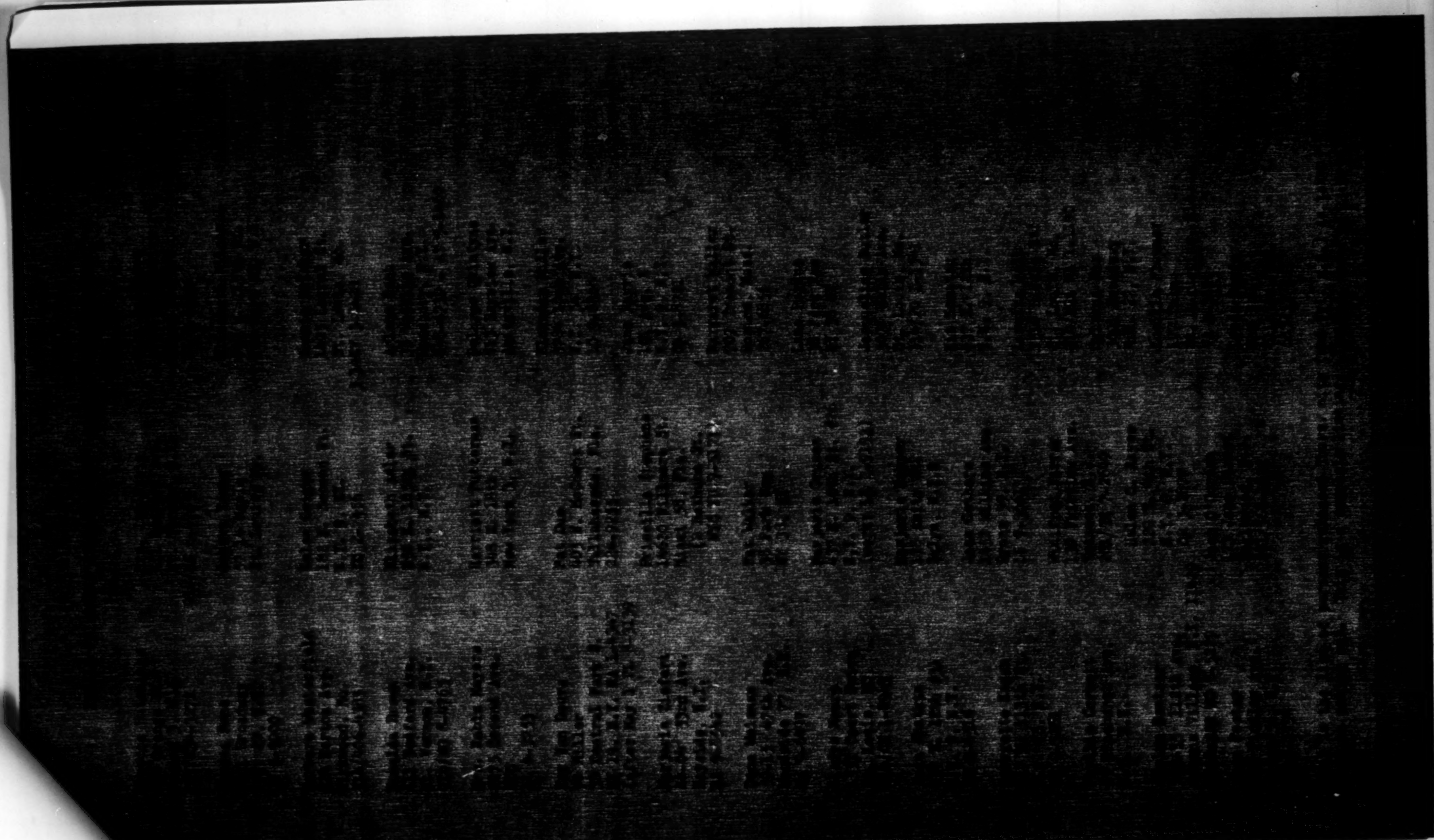
Paul Gould

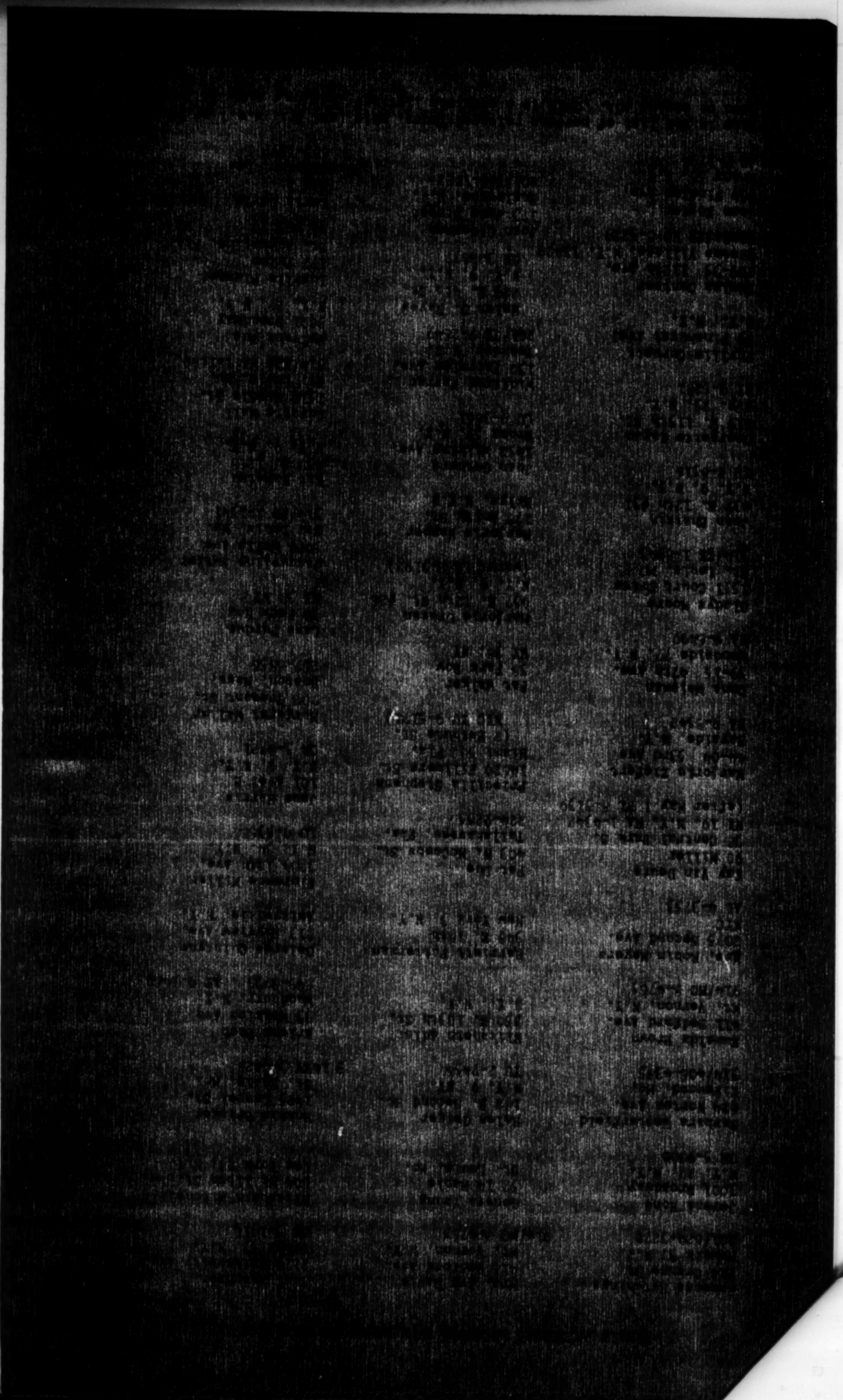
Allan Hoffman

Sue R Axelrod

Jeffrey Katz

Eric Eisenberg





For Part 3 - Thu. Dec 16, 1965

FLORIDA

F.	1302, 1334, 1318	ADKINS ✓	VS	1188, 92	PETERS ✓
"	1321, 1305, 1337	BILL BROWN ✓	"	1187, 1194	RUBIN X
"	1297, 1313, 1329	DOCTOR ✓	"	B2292, 4	REER ✓
"	1307, 1339, 1323	HOBBS ✓	"	~~1189, 1194~~	~~RUBIN~~
"	1301, 17, 33	ROBERSON ✓	"	B2269, 72	TAYLOR, F. ✓
"	1303, 19, 35	ROBERTS ✓	"	B2268, 71	TAYLOR, S. ✓
"	1364, 1378, 1396	RODENKO X	"	1140, 41	WEST ✓
"	1309, 1325	SKLAR ✓			
"	1312, 28, 44	STEVENS X			

SCHAEFER

S. B2391, 2474, 2475, 2567 PEAKE ✓

U.S. PAVILLION.

VS	B 2322, 2323	ALPER ✓
"	1169, 70	ANDERSON X
"	1148, 9	BAUMANN ✓
"	B 2283, 4	COOK ✓
"	1150, 1	JONES, J. ✓
"	1155, 60	JONES, W. ✓
"	1196 ONLY	KALIHTJIS ✓
"	1175, 6, 7	LITTLE ✓
"	1158, 63	MILLER ✓
"	1154, 9	PADWEE ✓

Title: '64 W.F **Ref:** FLORIDA PAVILLION

Initial: B. M.

1. **Name of Defendant (Age) (Occupation) Address Tel.**
   MARSHALL BROWN.
2. **Charges:** 722, 1851, 2036
3. **Arraignment:** (Date)
4. **Counsel Assigned:** ELI COHN.
5. **Trial Court and Judge:** QNS. CR. CT., Part II B
6. **Bondsman:** 7. **Amounts of Bail set:**
8. **Paroled:**
9. **Court, Dates (and other things to be done):**

Closed

		Date	Comment
a.			
b.			
c.	BAIL FORFEITURE REMI. EXPIRES	5/25/65	1
✓ d.	TRIAL SET FOR: QNS CR CT	4/27/65	
* e.	TRIAL (PART II B)	5/11/65	
f.	MOTION TO REMIT (C) RETURNABLE	5/10/65	Granted.
✓ g.	Cases dismissed	5/14/65	
h.			
i.			
j.			

OTHER CASES

Clark
Cohen
Corbett
Dul
Gordon
Gippel
Jenkins
Plummer

} Dismissed on DA's MOTION 6/1/65

Sklar – Pending 722 appeal } Still in USDC
Rodondo – to be remanded }

LOST

BILL BROWN
FRANK ROBERSON (Robinson) ADKINS DOCTOR
ED Robello
LAURRAS HOBBS
Priscilla Stevens

Title: '64 W.F. Ref: FLA PAVILLION

Case Closed Initial: D

1. Name of Defendant (Age) (Occupation) Address Tel.

DUE, PAT

2. Charges: SEE DOKTOR

3. Arraignment: (Date)

4. Counsel Assigned:

5. Trial Court and Judge:

6. Bondsman: 7. Amounts of Bail set:

8. Paroled:

9. Court, Dates (and other things to be done):

	Date	Comment
a.		
b.		
c.		
d. TRIAL - QNS CR. CT	4/27/65	
e. DISMISSED ON MOTION - DA	6/1/65	
f.		
g.		
h.		
i.		
j.		

Title: Case Closed '64 WF Ref: FLD. PAV

Initial: G R

1. Name of Defendant (Age) (Occupation) Address Tel.

GORDON, RICHARD

2. Charges: SEE DOKTOR

3. Arraignment: (Date)

4. Counsel Assigned:

5. Trial Court and Judge:

6. Bondsman: 7. Amounts of Bail set:

8. Paroled:

9. Court, Dates (and other things to be done):

	Date	Comment
a.		
b.		
c.		
d. TRIAL-GNS CR Ct.	4/27/65	- should adjourn to 6/1
e. STAY ORDER (PENDING APPEAL)	on jury trial	- discontinued
f. Dismissed - PT 28	6/1/65	
g.		
h.		
i.		
j.		

Title: **Ref:** FLA. PAVILLION

Initial: P, L.

1. **Name of Defendant (Age) (Occupation) Address Tel.**
   LANE PERDU
2. **Charges:** SEE MARSHALL BROWN
3. **Arraignment:** (Date)
4. **Counsel Assigned:** ELI COHN
5. **Trial Court and Judge:**
6. **Bondsman:** 7. **Amounts of Bail set:**
8. **Paroled:**
9. **Court Dates (and other things to be done):**

Case Closed

		Date	Comment
a.			
b.			
c.			
d.	SHE MUST CALL ELI	4/26/65	
e.	CHARGES DISMISSED	5/14/'65	
f.			
g.			
h.			
i.			
j.			

Title: **Ref:** W.F.- FLORIDA,

Initial: PL

1. **Name of Defendant (Age) (Occupation) Address Tel.**

LOUCILLE PLUMMER ST. Augustine

2. **Charges:** 722, 1851, 2036

3. **Arraignment:** **(Date)**

4. **Counsel Assigned:**

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

		Date	Comment
a.			
b.			
c.			
d.			
e.	Case dismissed, bail exonerated	6/1/65	✓
f.	Motion to remit forfeiture	6/7/65	granted
g.	Bail forf. remitted		
h.			
i.			
j.			

Case Closed

Title: 164WF **Ref:** FLA. PAV.

Initial: D, H.

1. **Name of Defendant (Age) (Occupation) Address Tel.**

DOKTOR, HENRY

2. **Charges:**

3. **Arraignment:** (Date)

4. **Counsel Assigned:**

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

	Date	Comment
a.		
b.		
c.		
d. TRIAL, QNS. CR. CT.	4/27/65	POSTPND - 5/26 DR PENDING STAY ORDER
e. STAY ORDER (PENDING APPEAL)		
f. Warrant issued 2036, 1851	- 4/27/65	Bail Forfeited
g. " " 722	6/1/65	
h.		
i.		
j.		

[OTHER Ds — PUE, GORDON]

Title: '64 W.F. **Ref:** U.S PAV.

Initial: R.M

1. **Name of Defendant (Age) (Occupation) Address Tel.**

   MARTIN RUBIN

2. **Charges:**

3. **Arraignment:** (Date)

4. **Counsel Assigned:** ARNOLD FEIN

5. **Trial Court and Judge:**

6. **Bondsman:** 7. **Amounts of Bail set:**

8. **Paroled:**

9. **Court, Dates (and other things to be done):**

		Date	Comment
a.			
b.			
64C 886 c.	PENDING; U.S. DC., EDNY		
d.	MOVING TO CALD	JUNE, '65	
e.	Remanded to Cal Ct.	11/10/65	
f.			
g.			
h.			
i.			
j.			

NEW ADDRESS: (END OF JUNE)
c/o MARTIN RUBIN (COUSIN)
3938 CUMBERLAND AVE.
L.A.

Bernard Patton 6/7 — USPAW — 6/17th Master

WORLD'S FAIR 5/28/1964 - Rev.

	NAME	ADDRESS	TELEPHONE	DATE
	Abel, Katy 1368	26 Summit Av. Larchmont, NY		6/17 (7th)
	Abrashkin, Wm. B 2400, 83	220 W. 104 St NYC		
	Adkins, Albert 1302, 34, 18	201 clinton Av - Bklyn		6/9 → 6/22
	Adler, Elizabeth (ER) B-2414, 97	Wrtheut - 350 E 105 NYC		
§	Alexander, Sue B 2276, 77	125 E 106 ~~2050, 2d Ave.~~ New ~~York~~ ~~City~~		B 2276 2277 6/9 6/17
§	Alper, Donald B-2322, 23	275 Babcock Rm.917 Bill Dorm		6/11 BF BW
	Amlin, P.	701, Irving Syracuse	475-9702	
	Amour, Steve B-2426	855 W.End Av. New York City	UN4-2653	
	Anderson, Franklin 1169	177-44 Saisley Bvd. So. Jamaica		6/8 → (SS) 6/17
§	Asgerssson, Eula 2232, 8	245 E., 110 St. New York, N.Y.		6/17
	Banks, Gilbert 2210, 11	319 Rostrand Av Bklyn		6/18/
	Banks,. Hamilton	~~118-17, 153 St.~~ Jamaica, N.Y.		
	Bardin, Hillel 1212	19 W. 65 St. New York, N.Y.	MO6-8763	6/17
§	Barron, Jerry 2245	5000 B'way NYC		6/18
	Barton, Michael B-2403, 86	315 E 65 St NYC		
	Bascon, Monique B-2498, 2581, 2445	4105 Cote des Neige - Montreal		(6/22 (?)
	Baumann, Holly 1145, 49	612-16 Aspex Pl. Forest Hills		6/8 → 6/17
	Beacholor, Wm. 1185, 91	92-42 185 St. Jamaica		6/7 - 6/17
	Bell, Virginia 1216	Gen. Del. Clinton, La.		Defaulted bail 6/17
	Beiber, Thos.(ER) B-2482, 2399	607 Funnald Av. ——, Conn.		
	Berman, Andrew 1178	173-09 Jewel Av. Flushing		6/17

325 Off

319

330

check Claudia Brown's date again 6/17 or 6/19

	Bock, Arlene B-2409, 92	33 Watkins Cr. Woodbury, N.J.	Tilden 8-6739. will be on trial 6/17 in Danville, Va.	
	Bohonan, Farmanica 1197	10th York	New Haven Conn.	6/19
	Boockcheim. Murry 1365	27 E, 13 St. New York, N.Y.		6/17
†	§ Bonner Rebecca 2256,7 U.S.	145 W 90 NYC Princeton, N.J.	(Rochelle arrest) TR 3-1732	6/12
	Bosco, Monique	4105 Cote des Neiges Montreal, Canada	see P.1	
	Brady, Mark 1128, 29	111-31 77 Ave. Forest Hills		6/17
	Braddock, Geo			
†	§ Braverman, Jan 2280, 79	Box 1931 Brett Hall Rutgers,		~~6/15~~ 6/16
	BRISKER, BONNIE (B234P)	N.Greenwich, N.J.	CH7-8699	6/17
	Brogan, Patrick 1232	521 Furn ald Hall	MO6-5000	6/17
	Brown, Bill 1321, 1305	513 W. Carolina. Talahassee, Fla		~~6/9~~ > 6/22
	§ Brown, Claudia 2304, 09 NYC	209-35 112 Av Jamaica N.Y.		~~5/20~~ ~~6/9~~ 6/17
	Brown, Emmelda 1371	411 Bedford Av. Mt.Vernon, N.Y.	MO8-4765	6/17
	Brown, Marshall 1300	84 Ravine Av. Yonkers, N.Y.	YO3-7190	Bail ~~revoked~~ reinstated ~~6/9~~ > 6/22
	BRISKER, BONNIE Bubabin, Geo. 1359.	193 Ld Ave		Reinstated Bail 6/17
	Bulkin, Joel 1166, 68	71-61 162 St. Queens		6/22
	Butler, Jacqueline 1346	St. Louis	FO1-1341	Bail Reinstated
	Canado, Frederick 1346, 1408, 22	110-29 172 St Jamaica		6/19
	Chernosfky, Daniel B-2405, 88	333 Ovington Ave Bklyn		
	Chernowitz, Alex	(Private Counsel)		6/8 © 6/10
†	§ Clark, John 2337, 39	Box 6418, U. of Rochester	CH4-8200 C-01	6/15
	§ Clark, Jimmie 1299, 1315, 31	109-76 142 St. Jamaica		~~6/9~~ > 6/22
	Clayton, Morris			
	Cohen, Jerry B-2406	600 W., 113 St New York, N.Y.	UN4-9243	
	§ Conway, Dorothy 2240	111-04 204th St Jamaica		~~5/20~~ > 6/17
	§ Cook, Ronnie 2283, 4	611 E 6th St NYC		~~5/27~~ > 6/17
	Corbett, Phyllis 1306, 22, 38	69 Pinehurst Av. NYC		~~6/9~~ > 6/22
	Cohen, Karen 1292	510 Riverdale-Yonkers		6/22
	CALLENDER, HERBERT 2234, 5	755 E 168 St		6/18

Coy, Ronald 1205	142 McDougal St NYC			1919 6/18 > 8/3
Crowner, David 1156.	160 Bevier Rd. Rutgers N.Brunswick, NY		246-1748	6/16 5/22
Curvin, Robert B-2366, 2444, 2364	136 W. Market St.		623-9157	
§ Dantzler, Thelma 2314, 5	187-22 Keyurlle St Queens, N.Y.	106 Huntington Terr. Newark N.J.		NB: 623 is a Newark tel. # 6/17.
Davis, Ivey 1373	1706 Davidson Av.		914MO8-4765	Defaulted bail Reinstated bail 6/17
Davis, Mars	Box 1, Clinton, La.			
Davis, Lorja	Bx1 Clinton La			BF
Davis, Paul 1172, 3, 4	107-38 159 St. Jamaica			6/17
Davis, Roy				6/17
Dibliase, Benjamin				
Dickson, John 1186, 93	104-30 203 St.			6/19
Digilio, Joseph 1133, 40, 47	39-67 47 St. L.I.C.			6/17
Dis, Peter B-2454, 2371	525 W. 113 St N.Y.C.			
Dixon, John				
Doctor, Henry 1297, 1313, 1329	2013 5th Av. N.Y.C.			6/9 > 6/22
Doe, John (MAYBE B-2231)	(see HIST, OWEN)			6/19
Dravich, Jay B-2427	81-10 135 St. Kew Gardens, NY		BO8-2724	6/17
Drew, Joseph 1234	1301B New Hall Col. U.		MO6-9000	6/17
Dubman, David 1235, 42, 49	360 Riverside Dr. NYC			6/17
Due, Patricia 1298, 1314, 1330	Talahassee CORE Florida Rte 2 Box 37 Quincy, Fla.			6/9 > 6/22
Dukes, Rever. (maybe Nelson C. Dukes?)	(30-39 Edson Av. Bronx)			6/23 - 6/23
Durham, Steve B-3377	31E, 7 St. New York, N.Y.			
§ Einhorn, Carl 1328, 9	68 Montague St.		MO2-8751	6/17
Eisenberg, Eric 1155	387E, Mosholo Pkw. New York		OL2-2916	6/24 6/17 P+3
Ender, Eric				6/17
Epstein, Howard 1190	48-29 190St. Flushing		FL7-7399	6/19
Delgado, Rafael A. 2228	210 E. 102 St NY 29.			6/18

Espada, Frank B-2380	245 Wortman Bklyn			
Farber, Tedi 1164	537 E., 6 St. New York, N.Y,	OR4-6123	6/23 Pf III	
§ Farmer, James A. 2300, 2305,	38 Park Row NYC	CO7-6270	6/9 6/19 6/17	
Farrar, Winifred B-2502, 85, 2419	130 Fairview - Teaneck, N.J.			
Farmain Barbara				
Feingold, Paul B-2429.	205 Albany Av. Brooklyn	PR3-3715		
Feist, Fritz	6 E, 74 St. NYC	TR9-0126		
Ferguson, Earthline 2226	141 W 123 St			
Fielding, Dorothy 1349	3001 B'way NYC	UN5-9000	~~6/1~~ 6/17	
Fisher, John B-2370	33-47 14 St. LIC			
Flesch, Walter 2208,9	527 E. 12th St. NYC		6/18	
Flug, Michael B-2384	237W, 105 St. NYC	MO3-6426		
Foa, Sylvania B-2355	3001 B'way.	UN5-9000		
Forbes, Wm. B-2404.	232 E, 6 St. NYC	CA8-4647		
Ford, Louis B-2392	4566 Kensington	JE5-7898		
Foster, Joan B-2410	984 Findlay	JE8-1794		
§ Fruchter, Norman 2266 7	188 6th Ave		~~6/4~~ 6/18	
Gabrielsky, Rob. 1166, 80, 90			~~6/9~~ 6/17	
Galper, Jeffry B-2402	311 W 107 NYC			
Geiger, Helen B-2443, 96	182 E. 2nd St NYC			
§ Gethers, Joan 2318,9	1452 Wilkens Av. Bronx.		~~6/1~~ 6/11	6-17
Gilbert, Nelson 1347	807B., 77PW Columbia U.	MO6-9000	6/19	
Gilford, Lisa (She is 17. Her parents belong to 7 Arts) 1184	75 Bank st. NYC	OR5-8891	6/23 P+3	
Gilmartin, Allan 2310	250 Mount Vernon Pl. Newark, N.J.		~~6/9~~ 6/18	

§	Glover, Gular 2297	204-12 100 Ave Hollis N.Y.		BW
	Glusakow, Bruce 1351	87 E., 3 St.(18) NYC	OR4-0857	6/19
§	Gordon, Paula MYC 2274,5	2050, 2d Av. NYC		18/91 ~~6/8~~ 6/12
§	Gould, Paul 2342,3	86 Seneca St Binghampton, N.Y.		6/17
	Green, Ed.Smith ● (SMITH-GREEN, ED) 1226,7,8	5808 Saratoga Rd Bklyn		~~6/12~~ 4094
X §	Green, Ernest 2301,06	397 1st Av (Mill 4 (PR3 1313		5/28 6/19 6/17
+ §	Greenberg, Michael 2291,93	2254 39 St East Meadow, L.I.	201CL4-1195	6/16
	Gripper, Vernall 1304,20,36	310 H St. West D.C.		~~6/9~~ 6/22
	Groves, Brent(ER) B-2388	365W, 25St.(7E) NYC	CH2-8477	
§	Gruzen, Marjorie(ER) 2332,3	437 E 12		6/15
	Gutman, M. 1142,3	157-24 20 Rd		6/18
§	HAHLBOHM Hahbohm, Wm. 2341,38	261 Broad St. Bridgeport, Conn.		Defaulted bail 6/17
	Hall, Loreta B 2422, 2505	1510 Biddle St. Louis (?)	MA1-1190	
	Heinigg, Paul 1133,37	151 Midwood St. Bklyn		5/27 ~~P.3~~ 6/16
	Hardy, Herbert B-2362	4418 Delmar St. Louis	FO1-3285	
	~~HA~~ HA Hardy, Walter 1134,5	426 Battie St. Bklyn		~~5/27~~ 6/16
	Harrington, Donald 1215,21	Community Church 10 Park Av NYC		6/17
	Harrington, Michael 1214,20	43 Commerce St.		6/17
	Harris, Clayton 2242,4	100-39 205 St. Hollis, LI		6/3 ~~6/12~~ 6/17 ? May 13 45
	Harris, Jane B-2417	101 Av. B New York	OR3-8721 SP7-3888	
	Harris, Jonathan B-2368	101 Av. B New York	OR3-8721	
§	Harris, Mary DS.	9 Hemingway Av New Rochelle		6/8

Holley, Elaine -6- 10 Pershing Av Yonkers — 6/12

	Harris, Robert 1261	343 E, 8 St. NYC	SP7-9019	6/24
	Heifetz, Henry 2254,5	39 W. 87th St NYC		~~6/5~~ 7/2
§	Hewitt, Sarah 2281,2	~~3050~~ 3350 Perry Av Bx NY.		6/17
	Hist, Owen 2231,2,3.	(John Doe?)		6/19
	Hobbs, Lanorres or Hookes, Loutras 1307	516 E. 6th St NYC Talahassee CORE		~~6/9~~ 6/22
	Holpert, James 1225	780 Gr. Concourse Bronx		6/24
§	Horowitz, Rachelle (ER) 2303,08	311 W24		~~5/20~~ ~~6/9~~ 17
	Hurwitz, Thos. 1181 -	43W., 93 St. NYC	RI9-4335	6/19
	Hutchings, Vivian B 2457, 2546, 2374	214 Orange St. Newark, N.J.		
	Insolia, Joyce B-2458, 2547, 2375	27 Mangett Pl. Greenlagon L.I.		
§	Jackson, Blyden 2316,7	81 E. 125th St. NYC		~~5/22~~ 6/18
	Jacobs, Alice B-2347, 2514	217 16 Fort Lee, N.J.		
	Jacobs, Martin B-2506, 89, 2423	21 71 B Central Rd Fort Lee, N.J.		
	Jaffe, Robert B-2397, 2480	98-30 67 Ave. Queens		
	Jampel. Sheila B2363	768 E, 21 St. Brooklyn	GE4-2424	
	Jasmin, Judith B-2495, 2412	3600 Ridgewood Montreal, Canada		
	Jasper, Paul B-2387	68 W., 106 St NYC	UN6-2289	
	Jenkins, Loren(ER) 1308, 24, 40	205 E 105 St, NYC		~~6/9~~ 6/22
	Johnson, Marjorie			
	Jones, Jimmie 1150	177-11 197 St. St. Albans		~~5/22~~ 6/16

	Jones, Taylor B-2390	2704 Ill.St. E. St. Louis, Ill.	UP5-4243	6/16
	Jones, Wm. 1155,60	2657 Herrick Rd		~~5/22~~ 6/16.
	Kagan, Georgette ~~B-2357~~ B-2357	617W., 113 St. NYC	RI9-5281	
	Kahn, Thos.(ER) 1211,17	397 8th Ave NYC (?)		6/17
	Kalimigis, Gujs			
	Kehol, Katherine 1269,82	31 Monroe St.		6/15
	Kalengert, Gus or Kanelbgert			
	Kalin, Thos.			5/18
	Kalintgis, Gus 1189,96	88-10 139 St. Flushing		6/19.
	Katz, Jeffrey 1263	1800 Davidson Av. Bronx	TR2-5449	6/15
	Keary, Ershine 1361,75,93	264 6th Ave NYC		6/17
§	Keith, Frances 2264,5	25 W 110 St. NYC		6/17
§	Kerr, Eva (ER) 2250,1	129 Suffolk St. NYC		~~6/9~~ 6/17
	Keven, Elliot 1264	— 80 Thompson		6/15
§	Kinsler, Michael 2326,7	740 Noble Ave. Bronx		6/15
	King, Everett	St. Louis	FO1-5028	
	King, Ernest	75-57 263 St. Glen Oaks, N.Y.		5/28
	Klein. Michael B. 2395	259 Clinton Pl. Newark	WA6-5460	
§	Komatsu, Kit 2335,5	137 E. 12th St. NYC c/o Reuben.		6/15
§	Larsen, Robert 2324.5	15 Washington Pl GR5 3818		~~5/22~~ 6/17
	Lawson, Carol 1270	Box 5952 U. of Rochester	634-CH4-8200	6/15
	Koplin, Phillip 2207	279 Henry St		6/22

	Leicester, Elizabeth 1183	119 Waverly Pl.	GR5-1372'	6/23
§	Lippert, Marla 2253, 52	48-36 190 St. Flushing		6/12
	Levy, Builder 1131, 36	239 Bay 22 St. Bklyn		5/27 P+3 6/16
	Little, Wm. 1175, 76, 77	89-50 146 St.		6/17
	Lloyd, Robert 1199	435 Riv. Dr. Chi (?)	NE8-5178	6/19
	Louis, Joseph B-2382, 2465	East Riv. CORE 129 Suffolk St. NYC		6/8
§	Ludwig, Gilbert 2258, 9	Box 706 142 Ford Hall Rutgers, New Brunswick, N.J.	CH7-1766 X6247	6/17
	Lymis, Carlyn 1146, 47	204-09 45 Rd		~~6/8~~ > 6/17
	Madison, Wm. 2236,	115-47 196 St. St. Albans		6/18
	Maidman, Paul MAYNARD B-2386	110 Furnald Hall	MO6-5000	
	Manuel George B-2428 2511	530 Lexington Ave. Bklyn		
	Mapp, Thos 1198, 1207	164-32 109 Rd		6/19
	Mappori	164-32 109 Rd. Jamaica		
	Margolies, Michael 1-A 1898, 99, 1900	117 Laidlaw St. NYC		6/16 - 1-A
	Markman, Barry 1202, 03, 04	25-28 Crugen St. Bronx		~~1-A~~ 1-A 6/8 6/19 ① DISH. ADA ② 55
	Marchand, Jacques (leaving US 6/27) 1157	Box 568 Rutgers New Brunswick	CH7-1766 EX6247	~~5/22~~ 6/16
	Martin, Rubin 1194, 1187	85-05 90 St. Jackson Hts		6/19
	Martin, Russell B-2370, 2477, 2394	192 2nd Ave. Westbury, L.I.		
	Martinez, Nicassio 2289, 90	224 Edgecomb Ave. NYC		~~5/28~~ ~~6/4~~ 6/17
§	~~Meyers, Joan~~			~~5/28~~
	Merin, Randy 1253.	24 Narcissus Dr. Levitt -		6/24

✓	Miller, Florence B-2411	3784, 10 Ave. NYC	LO9-6368	
✓	Miller, Robert B-2363	220 W.,104 St. NYC	UN5-1718	6/16
X	Miller, Wm. 1158,63	210 Bevier Rd. Rutgers New Brunswick, NJ	CH6-0989	6/16
/	Miranda, Victor Jr. B-2425, 2591	East Riv. CORE 170 E. 107 St. NYC		
✓	Mitchell, Eliz. B-2372	604 W., 115 St NYC		
✓	Mitchell, Jeffrey B-2360	604 W., 115 St. NYC		
✓	Moore, Booker B-2359	4030 St.Ferdinant St. Louis	CE1-8943	
✓	Moore, Gladys B-2349	1551 Carr. Dr. St. Louis	CE1-8943	Paid Rawlstel
X §	Murphy, Maurreen 2241,3	120 E. 4TH St.		~~6/8~~ 6/17.
	Myers, Robin 2264,3	2075 2nd Ave. Bklyn.		~~5/22~~ 6/18
	McCormick, Bob 2311	3150 Bway. NYC (?)		
	McLaughlin, Andrew 1265	26 Mineola St.	BE5-6345	6/15
	Napper, Marjorie 2213, 4, 5	178 Amity (?) St. Bklyn		6/18 BW
	Nelson, Robert	350 W., 18 St. NYC	WA9-4241	
	Nevin, Randy Nikes Nedes			
	~~Neogs~~, Robert 1363	377 Bergen St Bklyn		6/7 6/17
	Norton, Carl 1355, 1417, 1431	21-13 79 St. Elmhurst		Terra Zam ch
✓	Nyden, Paul B-2378	708 New Hall Col. U.	MO6-9000	
✓	Oesterreichter, Arthur B-2366, 2449	1075 Liachis Av. Teaneck, N.J.		
✓	O'Gorman, Joan B-2586, 2501, 2418	173 Jane St. Englewood, N.J.		
	Opatsky, Dan 1360	190 Riverside Dr.		6/17
	Oliver, Jim	342 W., 71 St. NYC	TR3.5999	
✓	Oliver, Harvey	478 Belmont Av. Newark	BI3-1624	

	Oliver, Melvin B-2381			6/17 P 3
	Padow, Robert 1-A 1897, 1901, 02	215 W. 23 St. NYC		6/16
	~~Paduee~~, Michael			5/22
X	Padwee, Michael 1154, 59	19 Union St. New Brunswick NJ	CH7-1766 EX 6247	6/16
§	Palmer, Christine 2312, 3	(Private Atty.)		6/17
	Pam, Robert 1348	714 Livingston H.	MO3-6600	6/19
	Parlin, Jeanne Lee 1144, 45	177-49 105 Ave,		~~6/8~~ > 6/17
§	Patterson, Susan 2286, 7	134 W. 15TH St. NYC		~~6/8~~ > 6/17
§	Pauly, Joan 2285, 88	1264 Amsterdam Av. NYC		~~6/8~~ > 6/17
	Peck, James 1213, 19	552 Riverside Dr.		6/17
	Peake, James Jr. B-2391, 2474	St. Louis	342 A E. B'way N.Y.	
	Penny, Gerald			
	Perdu, Lane 1311, 27, 43	Nat'l Cone Office		SHREV. ~~6/9~~ > 6/22
	Perez, Louis B-2389	237 W, 105 St. NYC	MO3-6426	
	Perlmutter, Steve B-2364	1436 Clay Av. Bronx, NY	JE7-6522	
	Perry, Ivory B-2569, 2393	511 Raymond St. St. Louis	FO1-1253	
	Peters, Steven 1188, 92	141-19 71 Rd Flushing		6/19
	Phillips, Modistine	(St. Louis)	EV5-3957	
X §	Pierce, Judith 2260, 4	970 E. 224TH St. NYC		6/20 6/17
	Pissarevsky, Jos. B-2385, 2468	private atty 555 Rotherlead Ave NYC	Probation Dept, City Hall	PE6-4430
	Plummer, Lucille 1310	177 Palma St. St. Augustine Florida	FL4-3690	Bail revoked 6/22
	Pearson, Ella J. 1372	19 E. 88 St		6/17

Pollock, Danny 1354	5208A Cabonne St. Louis	FO1-3285	6/17
Post, Cynthia B-2437, 2541, 2354	69 Mc Dougal St. NYC		
Posner, Bruce B 2220, 24, 19	15 8th Ave NYC		6/18
Puetterman, Harriet B-2407, 90	348 E. 18th St. NYC		
Quintyne, Delores B-2352, 2435	813, Bayview Ave NYC		
Rabin, Julius B-2383, 2466	14 Bedford St. Bklyn		
§ Reer, Karl V. 2292, 94	868 Lincoln Place - Teaneck, N.J.		6/16
§ Reyes, Helen 22956	229 E. 4th St. NYC		5/28 ~~6/9~~ 6/17
Rice, Menneth 2216, 7, 8	193 Grafton St		6/18
Roberson, Frank 1301, 17, 33	717 Green Ave Tallahassee, Fla.		FILED 6/9 - 6/22
Roberts, Eda 1303-19, 1335	511 H St. Wash. D.C.		FILED 6/9 - 6/22
Robert, Jaffe, B-2397, 2480	98-30 67th Ave. Queens		
Robert, Lloyd			
Robinson, Louis			
Hospital Robinson, Toni B-2350	2170 Univ. Av.	SE3-1916	
Rodriguez, Ruth B-2358, 2441	1047 Faile St. Bronx		
Ronel Jemera B-2351	3001 B'way. NYC	UN5-9000	
Rodenko, Igal 1364			6/17
Rose, Janet 2278	3925 17th Place N.E. Washington DC		Defaulted bail BW 6/17
Rose, Joshua 1356, 1418, 1432	33-04 91 St. Jackson Hts.		5/15 Term Term Ct
Richard, Gordon 1272	34-19 Irwin St		6/15

	Rosinsky, Joel	208-22 Bardwell Av. Queens		
	Roti, Vincent 2225	14-46 142nd St. Whitestone		
	Rubin, Martin 1187	33-05 90 St. Jamaica		6/19
	Rushing, Byron 1268	706 Almond St. Syracuse	476-0770	6/15
	Rushing, Lawrence 1268, 81	170-18 118 Ave.		6/15
§	Rustin, Bayard 2298	340 W. 28th St. NYC War Resisters League		6/17
	Sabler, Sandra 949, 60; 1130, 31; 1795	30-25 W 33 - Bklyn		~~6/17 P 3~~ > 6/18
	Schapiro, Robert 1236	419 Furnald H.	Mo6-5000	6/17
§	Schmidt, Thos. 2220, 1	507 W., 113 St. NYC	MO6-2146 UN5-4000 (Ex.3195)	~~6/8~~ > 6/17
	Schultzer, Martin 2212			
§	Schwanschild, Henry 2299	War Resisters League		6/17
	Scott, Earl B-2424			
	Shaftel, Ann 1357,	39-15 45 St. L.I.C.		Term Jam. Ct
	Sharrow, Elouise L.			
	Shatkin, Norman 1367, 81, 99	437 E. 12 St		6/17
	Sherman, Eugene 1254	62 Park Terrace W. NYC	LO9-1972	6/24
	Shatkin, Joan 1370, 84, 1402	437 E. 12 St.		6/17
	Siegel, Larry 1362	237 Thompson St. NYC		6/17
	Sklar, Eugene [redacted] 1309, 25, 44	103 Hammell Pl. NYC		~~6/9~~ > 6/22
	Slutzky, Martin 1237, 44, 51	48-07 39 Ave L.I.C.		6/17
	Solganick, Allen B-2401, 84	4303 Rowalt Dr. Queens		

Starzynski, Susan 1273	701 Irving Syracuse	475-9702	6/15	
Statman, James B-2396	37-06 89 St. Jackson Hts. NY	OL1-1855		
Stein, Robert V.				
Stelling, John B-2365	4254 Bates St. Louis	FL2-3796		
Sterling, John				
Stephens, ~~Patricia~~ PRICILLA 1312	14620 Filmore St. Miami, Fla.	CE8-1965	6/9	BW. stay wire. till 6/12
Straus, Arthur 1238	48 Stanley Rd. So.Orange, NJ	SO2-7776	6/17	
Streator, Geo.	70 SaSalle St. NYC	TR9-3100		
Sutlife, Jack				
§ Taylor, Frances 2269, 72	S. J. 106-56 160th St		6/11	6-17
§ Taylor, Sandra 2268, 71	S. J. 106-52 160th St.		6/11	6-17
Teahan, Jeremiah 1126, 27; 948, 61	9008 Flatlands Av. Bklyn		6/~~17 P 3~~ → 6/18	
Tenney, Gerald B-2398	2776 Jerome Ave NYC	LU4-3952		
~~Terrell, Peggy~~	[Release - 7 Juveniles]			
§ Thompson, John 2344, 5	Knapp Hill Rd. Castle Creek, N.Y.		6/17	
Tishman, Mark B-2367	316 W. 90 St. NYC	TR3-9995		
Torgoff, Stephen 1120, 21	290 West End Ave		6/17 P 3	
Trestman, Irene 1274, 87	473 West End Ave.		6/15	
Tristan, Israel 1428	937 Grecian Pt. Rd	Hopatcong, N.Y.	Term. Jam ct	
Tournour, Eugene 1262	5700 W.Minister St. Louis	PA7-5641	6/24	
Sutcliffe, Ralph 2239	840 Gr. Concourse Bronx		6/29	

2d Call

Vanderas, Kay B-2373	500 Hudson or c/o Miller 38CPS NYC	PL8-3139 PL8-3139	
Wagner, Norma 1275	253 Rosedale St. Rochester, NY	AR3-9431	6/15
Walker, Margaret 137K			6/9 6/17
Wallerstein, Les	225 W, 106 St. NYC	MO3-3435	
Wallerstein, Joan	225 W, 106 St. NYC	MO3-3435	
Wallerstein, Steve 1350	397 Thornton St. So. Orange, NJ	SO3-0783	6/19
Walker, Pat B-2408	~~failed to appear - recalled~~		
Weinerman, Diane 1345	205 W.End Av. NYC	TR4-0378	6/19 -
Karen Weingeist 1369, 83, 1401	180-33 80 Drive		6/17 PH III
Weinstock, Rosalind 2270, 73	119-14 Union Turnpike		6/11 PH III BFBW
Weinstein, Judy	587 Riv. Dr. NYC	AU3-4488	
Weinstone, Laurie 1358, 1420	39-67 47 Ave L.I.C.		(2) 1- 6/19 PH III 1- Term Tom ch
Weisman, Dena B-2420 -	59-15 47 Av. Woodside, NY	HA9-6497	
Weiss, Joel 1533	48-50 37 St. LIC		5/22 > 6/16 -
West, Frederick 1140, 41	377 Jefferson St.		6/24 P 3
Westerfield, Barbara B-2416, 99	624 Norton Kirkwood 2075 1st Ave. NYC	406-4385	
Widman, Donald 2246	193 2nd Ave. NYC		Defaulted bail BW.
Wilson Theodore 2330,1	MO5-1634(X403) 1591 BRUCKNER BLVD. BRNX 72, N.Y.		6/8 > 6/17 -
Winter, Frederick B-2369	243 Rugby Rd. Brooklyn	UL6-5058	6/17

THE FOLLOWING DOCUMENTS ARE THE

BEST AVAILABLE.

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF Queens DATE

JUDGE DIST. ATTY

Cal No.	Docket Number					OF
1						
2						
3						
4						
5						
6						
7						
8						
9						
10	B 1864	DOROTHY PUCKNER	P	2036 PL 1851 PL	TERRY THRU P POL	4
11	B 1865	DOROTHY PUCKNER	P	DIS CON	DO	4
12	B 1866	JEROME BIBULD	P	2036 PL 1851 PL	HUGAN-W P POL	4
13	B 1867	JEROME BIBULD	P	DIS CON	DO	4

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278A–80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS THURSDAY DATE JUNE 18, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
14	B 1868	IMMEDIATELY FREEDOM 2036 PL A/K/A ISAIAH BRUNSON	1851 PL	MC CLAFFERTY-W F POL	4	
	B 1869	JANE DOE, A/K/A ANGIE O EGGERTON	DO	DO	4	
15	B 1870	IMMEDIATELY FREEDOM A/K/A ISAIAH BRUNSON	DIS CON	DO	4	
	B 1871	JANE DOE, A/K/A ANGIE O EGGERTON	DO	DO	4	
16	B 2184	LEONARD KRAMER B	986-986H	CONNELLAN-PCT IV	3	
	B 2185	ERNEST LATTANZIO	DO	DO	3	
17	B 2188	LA BALLE GABLE B	974-975	SHALLEY-15 DIV	4	
18	B 2205	WALTER FLESCH B	1851 PL	FERNBRENCIY DIV	3	
19	B 2209	WALTER FLESCH B	DIS CON	DO	4	
20	B 2210	GILBERT BANKS B	1851 PL	FITZGERALD-107 PCT	3	
21	B 2211	GILBERT BANKS B	DIS CON	DO	3	
22	B 2214	MARJORIE HAPPER B	DO	DET WITALE-TP	4	
23	B 2213	MARJORIE HAPPER B	1851 PL	DO	4	
24	B 2215	MARJORIE HAPPER P	1990-3 PL	DO	4	
25	B 2216	KENNETH RICE B	DIS CON	BROOS-TP	4	
26	B 2217	KENNETH RICE P	1990-3	DO	4	
27	B 2220	BRUCE FONGNER P	DIS CON	TAYLOR-NYS TR	3	
28	B 2221	BRUCE FONGNER P	1990-3 PL	DO	3	
29	B 2227	RAFAEL A DELGADO	DIS CON	TARPEY-	2	
30	B 2234	HERBERT CALLENDAR	1851 PL	MILLET-17 DIV	3	
31	B 2235	HERBERT CALLENDAR	DIS CON	DO	3	
32	B 2236	WILLIAM MADISON JR	DO	WALSH-TPF	3	dism
33	B 2245	JERRY BARON B	DO	SPINOSA-TPF	2	dism
34	B 2262	ROBIN MYERS B	1851 PL	HARKNAK-TPF	2	
35	B 2263	ROBIN MYERS B	DIS CON	DO	2	
36	B 2266	NORMAN FRUCHTER B	1851 PL	REVUCK-TPF	3	dism
37	B 2267	NORMAN FRUCHTER P	DIS CON	DO	3	dism
38	B 2310	ALLAN GILMARTIN B	DO	ACORN-WP POL	3	
	B 2311	BOB MC CORMACK B	DO			

	Total	Disposed	Adjourned
NEW CASES		3	do
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS THURSDAY DATE JUNE 18, 1964

JUDGE _____ DIST. ATTY. _____ REPORTER _____

Cal No.	Docket Number	Defendant		Offense	Officer & assignment	prev. adjs.	Disposition
39	2/ B 2316	BLYDEN JACKSON	CB	DIS CON	ALEQUEN-WF PCL	2	disms
40	2/ B 2317	BLYDEN JACKSON	B	1851 PL	DO	2	disms
41	B 2620	JOHN J RYAN	P	DRIVI NTOX	SANTISE-105 PCT	2	
42	B 2721	EUGENE SEALE	B	974-975	GREEN-16 DIV	4	
43	B 2943	FRANK BARNETT	B	986-986B	AUBVLIB-PBQ	2	
44	B 3007	JAMES CARTER	P	974-975	ROMANO-17 DIV	3	
45	B 3077	HARRY THOMAS	B	ABC LAW	CARDELLA-16 DIV	3	
46	B 3110	SYLVESTER BRUNO	B	1276 & 1374	DE PALMA-15 DIV	2	
47	B 3112	ERNEST FUSS	B	LVE SCENE	MC DONALD-103 SQ	2	
48	B 3222	JOHN MURPHY	B	986-986B	MURPHY-17 DIV	2	
49	B 3224	JOSEPH BUTLER	B	DO	CONNORS-17 DIV	2	
50	B 3132	MORRIS GIOVATTO	B	DO	KARSON-PCCIU	2	
51	B 3221	ROBERT WILLIAMS	B	974-975	BANBLEY-PBQ	2	
52	B 3257	FLORENCE NUESEL	P	PET LAR	DET GLENNON-112 SQ	3	
	B 3258	JOAN NUESEL	P	DO	DO	3	
53	B 3267	GERARD ALBERT	B	LVE SCENE	DET KELLY-106 SQ	2	
54	B 3298	ANTHONY MORTELLARO		PET LAR	BENNETT-103 PCT	3	
55	B 3335	FRANCIS L ELLWANGER JAIL		DRIVINTOX	CORCORAN-110 PCT		1
56	B 3367	JACK DI GANGI	CB	ABC	ROMANO-17 DIV	3	
57	B 3373	OSCAR PARKER	B	974-975	SCHROEDER-16 DIV	1	
58	B 3387	WILMA GERALD	B	DO	CARDELLA-16 DIV	2	
59	B 3408	MARY USCINSKI	P	PET LAR	DE VITO-109 SQ	1	
60	B 3425	PATRICK PEACE JAIL		986B	DET DONNELLAN-PCCIU	2	
61	B 3384	FRANK PALAZZOLO	P	ASSAULT	NOLAN-114 PCT	4	
62	B 3432	SAM TUFFREE	P	DRIVINTOX	GILMARTIN-102 PCT	1	
63	B 3444	ALBERT BETFORD	P	1300 PL	LAVIN-108 PCT	2	
64	B 3477	JAMES H CUMMINGS	P	600 VAT	LAW MOSER-102 PCT	1	
65	B 3516	JOHN W ROLAND	P	1192-2	MANIS-109 PCT	1	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1B COUNTY OF QUEENS THURSDAY DATE JUNE 18, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
66	B 3526	EDWARD CASTELLANO	555 PL	COURT SUMMONS	2	
67	B 3527	CATHY CASTELLANO	DO	DO	2	
68	B 3540	JOSEPHINE VESCIO	986-986B	DET CORCORAN-PCCIU	2	
69	B 3610	WILL SPRINKLE P	ASSAULT	WALSH-103 PCT	2	
70	B 3685	HAROLD GEORGE BALL	DRIVINTOX	BOOTH-AIS		
		FOR HEARING				
71	B 3095	EUGENE WILLIAMS B	974A-974 975	MOORE-PBQ		
72	B 3096	HENRY WADE B	DO	(SEE CAL 75) DO		
73	B 3514	GERARD DE VIVA B	986C-986-986B	SCHAUB, CARDILE PCCIU		
	B 3515	PAUL SABBACH B	DO	DO		
73	B 3543	ALBERT COVELLI B	986, 986B 986C	DET CASABURI-PCCIU		
		FOR SENTENCE				
74	B 780/64	LUCILLE PAGE	580-974-	WILLIAMS-17 DIV		
	B 762	PEARL DAVIS LEWIS	975 DO	DO		
75	B 1497	EUGENE WILLIAMS B	975	LE ROLLAND-16 DIV (SEE CAL 71*		
76	B 1969	CLEVELAND NEWMAN	ASSAULT MAL MISCH	CORRIGAN-114 PCT		
77	B 2144	JAMES WALKER B	DRIVINTOX	MACCHIO-101 PCT		
78	B 3208	EXAY BORRERO P	DO	CUNNINGHAM-112 PCT		
79	B 3122	CLARENCE R SADDEN	PET LAR	DET BOLIN-114 SQ		
80	B 3123	CLARENCE R SADDEN	UNREG VEH	DO		
81	B 3230	JOSEPH BATTLE	UNINSPECTED VEH	SAVIN-AIS		
82	B 3231	JOSEPH BATTLE	UNREG VEH	DO		
83	B 3232	JOSEPH BATTLE	SPEED	DO		
84	B 3234	JOSEPH BATTLE P	UNL OPER	DO		

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1B COUNTY OF QUEENS THURSDAY DATE JUNE 18, 1964

JUDGE _____ DIST. ATTY. _____ REPORTER _____

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
85	B 3234	JOSEPH BATTLE P	UNINS VEH	SAVIN-AIS		
86	B 3266	GERARD ALBERT P	UNL OPER	BET KELLY-106 PC		
		TO PAY FINE				
87	B 1753/63	JOHN PETUSHKIN	986-986B	$50 OR 5 DAYS		
		FOR TRIAL				
88	B 3716	ROSARIO QUAGLIA B	906-986B	KARSON-PCCIU	1	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS WEDNESDAY DATE JUNE 17, 1964

JUDGE DIST ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
1	B 1758	EARL BELLOW B	375 PL	[illegible]	5	
2	B 1942	ROBERT KENNEY P	[illegible]	[illegible]	3	
2A	B 1941	[illegible]	[illegible]	[illegible]	3	
3	B 1943	ROBERT KENNEY P	PAL TR SIGNAL	DO	3	
4	B 1944	ROBERT KENNEY P	[illegible]	DO	3	
5	B 1945	[illegible]	[illegible]	DO	3	
6	B 2027	MATTHEW DE VARGAS	[illegible]	[illegible]	3	
7	B 2066	[illegible]	[illegible]	[illegible]	4	
8	B 2067	[illegible]	[illegible]	[illegible]	4	
9	B 2068	[illegible]	[illegible]	[illegible]	4	
10	B 2070	[illegible]	[illegible]	[illegible]	3	
11	B 2145	[illegible]	[illegible]	[illegible]	1	
12	B 2240	[illegible]	[illegible]	[illegible]	5	16- 6/19
13	B 2251	EVA [illegible]	[illegible]	[illegible]	3	dsp - 6/19
14	B 2237	ERLA ACKERSON P	DO	MATTHEW	3	16 6-19
15	B 2238	ERLA ACKERSON B	1851 PL	DO	3	dsp 6-19
						6-23
16	B 2241	MAUREEN MURPHY B	818 CON	DANTSCHISCH-66	PCT2	6-23
	B 2242	MARY MORRIS	DO	DO	3	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278A–80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS DATE [illegible]

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
17	B 2243	MAUREEN MURPHY	B 1851 PL	[illegible] PCT 9		G W J
	B 2244	MARY MARRIS	B DO	DO	3	
18	B 2250 B2	MARLA LIPPERT	B DO	DET MART [illegible] 29	2 BURG	
19	B 2253	MARLA LIPPERT	B 810 COM	DO	2	
20	B 2256	REBECCA BONNER	B 1851 PL	DET [illegible]	2	
21	B 2257	REBECCA BONNER	B 810 COM	DO	2	
22	B 2258	GILBERT LUDWIG	B 1851 PL	DET [illegible] 28	2	
23	B 2259	GILBERT LUDWIG	B 810 COM	DO	2	
24	B 2260	JUDITH T PIERCE	B 1851 PL	[illegible]	2	adj 6-19
25	B 2261	JUDITH T PIERCE	B 810 COM	DO	2	adj 6-19
26	B 2264	FRANCES KEITH	B 1851 PL	DET [illegible]	2	adj 6-19
27	B 2265	FRANCES KEITH	B 810 COM	DO	2	adj 6-19
28	B 2268	SANDRA TAYLOR	B 1851 PL	DET [illegible] 29	2	adj 6-23
	B 2269	FRANCES TAYLOR	B DO	DO	2	"
	B 2270	ROSALIND WEINSTOCK	DO	DO	2	"
29	B 2271	SANDRA TAYLOR	B 810 COM	DO	2	"
	B 2272	FRANCES TAYLOR	B DO	DO	2	"
	B 2273	ROSALIND WEINSTOCK	DO	DO	2	"

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278A–80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1B COUNTY OF BRONX SEPTEMBER JUNE 17, 1964

JUDGE DIST. ATTY. RY CLERK

Cal No.	Docket Number	Defendant		Offense	Officer & Assignment	Prev. Adj.	Disposition
30	B 2274	PAULA GORDON	B	DIS CON	MARTINOTTI	3	
31	B 2275	PAULA GORDON	B	1851 PL	DO	3	
32	B 2276	SUE ALEXANDER	B	DO	RUDE-TPF	3	
33	B 2277	SUE ALEXANDER	CB	DIS CON	DO	3	
34	B 2281	SARA HEWITT	B	1851 PL	DET LO GUIDICE-	3	
					DO	3	
35	B 2282	SARA HEWITT	B	DIS CON	DO	3	
36	B 2283	RONNIE COOK	B	1851 PL	BRINDAGE-33 SQ	3	
37	B 2284	RONNIE COOK	B	DIS CON	DO	3	
38	B 2285	KERN PAULY JOAN	B	1851 PL	DET SAVINO-7? ??	3	
	B 2286	SUSAN PATTERSON	B	DO	DO	3	
39	B 2287	SUSAN PATTERSON	B	DIS CON	DO	3	
	B 2288	JOAN PAULY	B	DO	DO	3	
40	B 2289	NICASIO MARTINEZ		1851 PL	MARRERO-TPF	3	
41	B 2290	NICASIO MARTINEZ		DIS CON	DO	3	
42	B 2295	HELEN REYES	P	DIS CON	MC MAHON-1 PCT W F POL	4	
43	B 2296	HELEN REYES	P	1851 PL	DO	4	
44	B 2297	DOLAN GLOVER	P	DIS CON	FISHER-1 PCT W F POL	2	

NEW CASES

OLD CASES

CRIMINAL COURT OF THE CITY OF NEW YORK

PART [redacted] AR COURT [redacted] [redacted] IT [redacted]

JUDGE [redacted]

Cal No.	Defendants						
45	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
54	B 2320	THOMAS SCHMIDT CB	80	RYAN-TPF	2	PG 6-19	
55	B 2321	THOMAS SCHMIDT B	1851 PL	80	2	dsp 6-19	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278A-80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART _____ COUNTY OF _____ DATE _____

JUDGE _____ DIST. ATTY _____ REPORTER _____

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
56	B 2324	ROBERT LAWSON P	DIS CON	BAUMANN-ME POL	3	dism
57	B 2325	ROBERT LAWSON B	1051 PL	DO	3	dism
58	B 2326	MICHAEL L KINSLER	DIS CON	CARLE-[illegible] DET [illegible] 005	4	PG 6-19
59	B 2327	MICHAEL L KINSLER	1051 PL	[illegible]-WEBB-1ST	4	dism 6-19
60	B 2328	CARL KINHORN B	DO	[illegible]-WEBB-1ST	3	dism 6-19
61	B 2329	CARL KINHORN B	DIS CON	DO	3	PG 6-19
62	B 2330	THEODORE WILSON P	DIS CON	MC BUCKLEY-MEPD	3	PG 6-19
63	B 2331	THEODORE WILSON B	1051 PL	DO	3	dism 6-19
64	B 2279	JAN BRAVERMAN	[illegible]	[illegible] O'CONNELL-DO	3	6-13
65	B 2280	JAN BRAVERMAN B	DIS CON	DO	3	
66	B 2291	MICHAEL GREENBERG	1051 PL	ZITLINSKI-PD 39	3	
	B 2292	KARL V REES B	DO	DO	3	
67	B 2293	MICHAEL GREENBERG	1051 PL		3	
	B 2294	KARL V REES B	DO	DO	3	
68	B 2336	ALLEN ZAGARELLI	DIS CON	KILLEY-MPOL	3	PG 6-19
69	B 2338	WILLIAM [illegible]	DO	DO	2	PG 6-19
69A	B 2341	WILLIAM [illegible]	1051 PL	DO	2	dism 6-19
70	B 2340	ALLEN ZAGARELLI	1051 PL	DO	3	dism 6-19
71	B 2342	PAUL GOULD	DO	MC KILLMAY-MPOL	3	6-19
72	B 2343	PAUL GOULD B	DIS CON	DO	3	6-19
73	B 2344	JOHN THOMPSON B	DO	DO	3	PG 6-19
74	B 2345	JOHN THOMPSON B	1051 PL	DO	3	dism 6-19
75	B 2672	IRMA LAWRENCE B	974-975	COUGHLIN-16 DIV	3	
76	B 2722	PATRICK ROSSIELLO	973	DET MC LOUGHLIN-PCCIU	3	

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278A–80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 48 COUNTY OF QUEENS WEDNESDAY DATE JUNE 17, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant		Offense	Officer & assignment	prev. adjs.	Disposition
77	B 2892	WILLIE R LEWIS	P	1192-1	OSTERMAN-103 PCT	2	
78	B 3113	GEORGE T MARK	B	986-986B	SALLARULO-15 DIV	2	
79B	B 3263	GAETANO CARCONE	B	DRIVINTOX	WROBLESKI-105 PCT	2	
80	B 3274	HOWARD STECHER	P	ABC LAW	POPE-105 PCT	1	
81	B 3284	JOSEPH PARETTI	B	986-986B	FERRARY-PCCIU	2	
82	B 3304	GEORGE M MIKULA	B	DRIVINTOX	PONTE-105 PCT	1	
83	B 3315	JOSEPH PARETTI	B	986-986B	DET DUVAL-PCCIU	2	
84	B 3362	JOHN DE PRIMO	B	DO	LT ROLLAND-16 DIV	1	
	B 3363	CARL DE PRIMO	B	DO	DO	1	
85	B 3378	WILLIAM E RUSSO	B	986	CAPAK-17 DIV	2	
86	B 3418	HUBERT MOORER	P	DRIVINTOX	SMART-103 PCT	1	
87	B 3429	CHRIS PAPPAS	B	986-986B	DET GORGORAN-PCCIU	1	
	B 3430	LEON ROBERTS	B	DO	DO	1	
	B 3431	JOSEPH TORTORA	B	DO	DO	1	
88	B 3493	RICHARD HENRY	B	1192-2	REGINE-110 PCT	1	
89	B 3497	CONSTABLE AGUSTA		DRIVINTOX	O'BRIEN-112 PCT	1	
90	B 3498	CONSTABLE AGUSTA		VEH OPER	DO	1	
91	B 3499	CONSTABLE AGUSTA		IMPROPER PLATES	DO	1	
92	B 3602	FRANK WALKER	B	974-975	COUNCIL-16 DIV	1	
93	B 3608	ROBERT MC GRAY	P	DIS CON	ENGEL-103 PCT	1	
	B 3609	ANNIE JONES	P	DO	DO	1	
94	B 3613	EDWARD DANIELS	P	974-975	HAMER-16 DIV	1	
95	B 3625	PERCY CUNNINGHAM		ASSAULT	DET RATH-110 SQ	1	
96	B 3627	FREDERICK SCHIPPELL		DRIVINPAIRSON	FICO-110 PCT	1	
97	B 3631	BRIAN FITZGERALD	P	DIS CON	KATZ-110 PCT	1	
98	B 3632	BRIAN FITZGERALD		ASSAULT	DO	1	
		FOR SENTENCE					
99	B 1157	LOUISE HAYNES	P	ATT 1424	SCHMID-103 PCT		

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278A–80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS WEDNESDAY DATE JUNE 17, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
100	B 1350	MICHAEL DI NOVI B	986-986B	BANSLEY-PBQ		
101	B 1415	JOSEPH LOZITO B	DO	MURPHY-PCCIV		
102	B 1660	EDWARD HANSEN B	DO	BETHMURRAY-PCCIV		
103	B 2772	BETTY COLLINS	DIS CON	SGT MOORE-WFPD		SS
✓	B 2773	DORIS RUTLEDGE	DO	DO		SS
✓	B 2774	SHERRY HOYES	DO	DO		SS
✓	B 2775	CAROL LUSTGARTEN	DO	DO		SS
104	B 2629	LOUIS S FOSTER B	DO	TO PAY FINE		
	B 2630	EDWARD NICKERSON JR	DO	$25 OR 5 DAYS DO		
105	B 2776	BETTY COLLINS B	2036 PL	SGT MOORE-WFPD		SS
✓	B 2777	DORIS RUTLEDGE B	DO	DO		SS
✓	B 2778	SHERRY HOYES B	DO	DO		SS
✓	B 2779	CAROL LUSTGARTEN	DO	DO		SS

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

IB — Irwin — DATE WEDNESDAY, NOV 6, 1963

JUDGE _____ DIST. ATTY _____ REPORTER _____

4 yrs Jun 17 d

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
1						
2		FOR TRIAL				
	B 2346 X	JACQUELINE BUTLER	2036 PL	BARTLEY-W F POL		
3						
4	B 2347	ALICE JACOBS	DO	DO		
5	B 2348	BONNIE BRISKER	DO	DO		
6	B 2349 X	GLADYS MOORE	DO	DO		
7	B 2350	TONI ROBINSON	DO	DO		
8	B 2351	JEMERA RONEL	DO	DO		
9	B 2352	DOLORES QUINTYNE	DO	DO		
10	B 2353	SHEILA JAMPEL	DO	DO		
11	B 2354	CYNTHIA POST	DO	DO		
12	B 2355	SYLVANIA FOA	DO	DO		
13						
14	B 2356	GENEVA YOUNG	DO	DO		
15	B 2357	GEORGETTE KAGAN	DO	DO		
16	B 2358	RUTH RODRIQUEZ	DO	DO		
17	B 2359	BOOKER MOORE	DO	DO		
18	B 2360	JEFFERY MITCHELL	DO			
19	B 2361	ROBERT GURVIN	DO			
20	B 2362	HERBERT HARDY	DO			
21	B 2363	ROBERT MILLER	DO			
22						
23	B 2364	STEVEN PERMUTTER	DO			
24	B 2365	JOHN STELLING	DO			
25	B 2366	ARTHUR HEISTERBERGER	DO			
26	B 2367	MARK TIRNAUR	DO			
27	B 2368	JONATHAN HARRIS	DO			
28						
29	B 2369	FREDERICK WINTER	DO			
30	B 2370	JOHN FISHER	DO			
	B 2371	PETER DIX	DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS WEDNESDAY DATE MAY 6, 1964

JUDGE _____ DIST. ATTY. _____ REPORTER _____

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
1	B 2372	ELIZ MITCHELL	2036 PL			
2	B 2373	KAY VANDERS	DO			
3	B 2374	VIVIAN REBECCA HUTCHINGS				
4	B 2375	JOYCE INSOLIA	DO			
5	B 2376	CARLISLE N YEARWOOD	DO			
6	B 2377	STEVE DURHAM	DO			
7	B 2378	PAUL HYDEN	DO			
8	B 2379	SHELDON ZINN	DO			
9	B 2380	FRANK ESPADA	DO			
10	B 2381	HARVEY OLIVER	DO			
11	B 2382	JOSEPH LOUIS	DO			
12	B 2383	JULIUS RABIN	DO			
13	B 2384	MICHAEL FLUG	DO			
14	B 2385	JOSEPH PISSARELVSKY	DO			
15	B 2386	MAYNARD HAIGHAN	DO			
16	B 2387	PAUL JASPER	DO			
17	B 2388	BRENT GROVES	DO			
18	B 2389	LUIS PEREZ	DO			
19	B 2390	TAYLOR JAMES	DO			
20	B 2391	JAMES PEAK	DO			
21	B 2392	LOUIS FORD	DO			
22	B 2393	IVORY PERRY	DO			
23	B 2394	RUSSELL MARTIN	DO			
24	B 2395	MICHAEL KLEIN	DO			
25	B 2396	JAMES STATHAM	DO			
26	B 2397	ROBERT JAFFE	DO			
27	B 2398	GERALD TENNEY	DO			
28	B 2399	TOM BIEBER	DO			
29	B 2400	WILLIAM ABRASHKIN	DO			
30	B 2401	ALLEN SOLOMICK	DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 1B COUNTY OF QUEENS WEDNESDAY DATE MAY 6, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
1						
2	B 2402	JEFFRY SALPER	2036 PL			
3	B 2403	MICHAEL BARTOS	DO			
4	B 2404	WILLIAM FORBS	DO			
5	B 2405	DANIEL CHERNOFSKY	DO			
6	B 2406	JERRY COHEN	DO			
7	B 2407	HARRIET PUTERMAN	DO			
8	B 2408	PAT WALKER	DO			
9	B 2409	ARLENE BUCH	DO			
10	B 2410	JOAN FOSTER	DO			
11	B 2411	FLORENCE MILLER	DO			
12	B 2412	JUDITH JARMIN	DO			
13	B 2413	HELEN GEIGER	DO			
14	B 2414	ELIZABETH ADLER	DO			
15	B 2415	MONIQUE BARCOK	DO			
16	B 2416	BARBAR WESTERFIELD	DO			
17	B 2417	JANE HARRIS	DO			
18	B 2418	JOAN O'GORMAN	DO			
19	B 2419	WINIFRED FARRAR	DO			
20	B 2420	DENA WEISMAN	DO			
21	B 2421	MARJORIE ZIEFORT	DO			
22	B 2422	LORETTE HALL	DO			
23	B 2423	MARTIN JACOBS	DO			
24	B 2424	EARL SCOTT	DO			
25	B 2425	VICTOR MIRANDA JR	DO			
26	B 2426	STEVE ANOUR	DO			
27	B 2427	JAY BRAVICH	DO			
28	B 2428	GEORGE MANUEL	DO			
29	B 2429	PAUL FEINGOLD	DO			
30			DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 10 COUNTY OF QUEENS WEDNESDAY DATE MAY 6, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	Prev. adjs.	Disposition
1	B 2490	HARRIET PUTERMAN	722-E PL.	BROOKLYN-W 8 POL.		
2	B 2491	PAT WALKER	DO			
3	B 2492	ARLENE ROSH	DO			
4	B 2493	JOAN FOSTER	DO			
5	B 2494	FLORENCE MILLER	DO			
6	B 2495	JUDITH JARMIN	DO			
7	B 2496	HELEN SEIGER	DO			
8	B 2497	ELIZABETH ADLER	DO			
9	B 2498	MONIQUE BARCOS	DO			
10	B 2499	BARBARA WESTERFIELD	DO			
11	B 2500	JANE HARRIS	DO			
12	B 2501	JOAN O'GORMAN	DO			
13	B 2502	WINIFRED FARRAR	DO			
14	B 2503 X	DENA WEIRMAN	DO			
15	B 2504	MARJORIE ZIEFERT	DO			
16	B 2505	LORETTE HALL	DO			
17	B 2506	MARTIN JACOBS	DO			
18	B 2507	EARL SCOTT	DO			
19	B 2508	VICTOR MIRANDA JR	DO			
20	B 2509	STEVE ANOUR	DO			
21	B 2510	JAY BRAVICH	DO			
22	B 2511	GEORGE MANUEL	DO			
23	B 2512	PAUL FEINGOLD	DO			
24						
25						
26						
27						
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	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS WEDNESDAY DATE MAY 6, 1964

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
1	B 2460	STEVE BURHAM	723-2	BRODERICK-W F POL	1	
2	B 2461	PAUL NYDEN	DO			
3	B 2462	SHELDON ZINN	DO			
4	B 2463	FRANK ESPADA	DO			
5	B 2464	HARVEY OLIVER	DO			
6	B 2465	JOSEPH LOUIS	DO			
7	B 2466	JULIUS BABIN	DO			
8	B 2467	MICHAEL FLUG	DO			
9	B 2468	JOSEPH PISSAREVSKY	DO			
10	B 2469	HAYWARD HAIDMAN	DO			
11	B 2470	PAUL JASPER	DO			
12	B 2471	BRENT GROVES	DO			
13	B 2472	LUIS PEREZ	DO			
14	B 2473	TAYLOR JAMES	DO			
15	B 2474	JAMES PEAKE JR	DO			
16	B 2475	LOUIS FORD	DO			
17	B 2476	IVORY PERRY	DO			
18	B 2477	RUSSELL MARTIN	DO			
19	B 2478	MICHAEL KLEIN				
20	B 2479	JAMES STATHAM	DO			
21	B 2480	ROBERT JAFFE				
22	B 2481	GERALD TENNEY	DO			
23	B 2482	TOM BIEBER				
24	B 2483	WILLIAM ABRAHKIN	DO			
25	B 2484	ALLEN GELBANIC	DO			
26	B 2485	JEFFRY GALPER	DO			
27	B 2486	MICHAEL BARTOS	DO			
28	B 2487	WILLIAM FORBS				
29	B 2488	DANIEL CHERNOFSKY	DO			
30	B 2489	JERRY COHEN	DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS DATE MAY 6, 1964

JUDGE DIST. ATTY REPORTER

	Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
2	1	B 2430	JACQUELINE BUTLER	722-2	BRODERICK-M F POL	1	
	2	B 2431	ALICE JACOBS	DO			
	3	B 2432	GLADYS MOORE	DO			
	4	B 2433	TONI ROBINSON	DO			
	5	B 2434	JENERA RONEL	DO			
	6	B 2435	DOLORES QUINTYNE	DO			
	7	B 2436	SHEILA JAMPEL	DO			
	8	B 2437	CYNTHIA POST	DO			
	9	B 2438	SYLVANIA FOA	DO			
	10	B 2439	GENEVA YOUNG	DO			
	11	B 2440	GEORGETTE KAGAN				
	12	B 2441	RUTH RODRIQUEZ	DO			
	13	B 2442	BOOKER MOORE	DO			
	14	B 2443	JEFFERY MITCHELL	DO			
	15	B 2444	ROBERT GURVIN				
	16	B 2445	HERBERT HARDY	DO			
	17	B 2446	ROBERT MILLER				
	18	B 2447	STEVEN M BRUTTER	DO			
	19	B 2448	JOHN STELLING	DO			
	20	B 2449	ARTHUR OESTERREICHER				
	21	B 2450	MARK TIBBIAN	DO			
	22	B 2451	JONATHAN HARRIS				
	23	B 2452	FREDERICK WINTER	DO			
	24	B 2453 X	JOHN FISHER	DO			
	25	B 2454	PETER BIX	DO			
	26	B 2455	ELIZ MITCHELL	DO			
	27	B 2456	KAY VANDEUNS	DO			
	28	B 2457	VIVIAN REBECCA HUTCHINGS				
	29	B 2458	JOYCE INSOLIA				
	30	B 2459	CARLISLE N YEARWOOD	DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278-80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF [redacted] MAY [redacted]

JUDGE _____ DIST. ATTY. _____ STENOGRAPHER _____

Cal No.	Docket Number	Defendant	Offense	Disposition	Sent. Adj.	Bail
1						
2	B 2572	JAMES STATHAM	[redacted]	[redacted]		
3	B 2573	ROBERT JAFFE	[redacted]			
4	B 2574	GERALD TENNEY	[redacted]			
5	B 2575	TOM SIEGEL	[redacted]			
6	B 2576	WILLIAM ABRAHAMS	[redacted]			
7	B 2577	ALLEN SOLOMON	[redacted]			
8	B 2578	JEFFRY BALPER	[redacted]			
9	B 2579	MICHAEL BARTOS	[redacted]			
10	B 2580	WILLIAM FORBS	[redacted]			
11	B 2581	MONTOUE SABOE	[redacted]			
12	B 2582	BARBARA WESTERFIELD	[redacted]			
13	B 2583	JANE HARRIS	[redacted]			
14	B 2584	JOAN O'BRIEN	[redacted]			
15	B 2585	WINIFRED FARRAR	[redacted]			
16	B 2586	DEBRA WEISMAN	[redacted]			
17	B 2587	MARJORIE ZIEGERT	[redacted]			
18	B 2588	CORETTA HALL	[redacted]			
19	B 2589	MARTIN [redacted]	[redacted]			
20	B 2590	CARL [redacted]	[redacted]			
21	B 2591	[redacted]	[redacted]			
22	B 2592	[redacted]	[redacted]			
23	B 2593	[redacted]	[redacted]			
24	B 2594	[redacted]	[redacted]			
25	B 2595	[redacted]	[redacted]			
26	B 2596	[redacted]	[redacted]			
27						
28						
29						
30						

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

mm 278-80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

18 [illegible] DATE

JUDGE DIST. ATTY REPORTER

Cal No.	Docket Number	Defendant	Offense	Offense & assignment	Plea guilty	Plea
1						
2	B 2543	PETER DIX	[illegible] PL	[illegible] V F PL		
3	B 2544	ELIZ MITCHELL	DO			
4	B 2545	KAY VANDEURS	DO			
5	B 2546	VIVIAN REBECCA HUTCHINGS				
6	B 2547	JOYCE INSOLIA				
7	B 2548	CARLISLE N YEARWOOD	DO			
8	B 2549	STEVE DURHAM	DO			
9	B 2550	ROBERT MILLER	DO			
10	B 2551	STEVEN P SHUTTER	DO			
11	B 2552	JOHN STELLINA	DO			
12	B 2553	ARTHUR OESTERREICHER				
13	B 2554	MARK TISHMAN	DO			
14	B 2555	SHELDON ZINN	DO			
15	B 2556	FRANK ESPADA	DO			
16	B 2557	HARVEY OLIVER	DO			
17	B 2558	JOSEPH LOUIS	DO			
18	B 2559	JULIUS RABIN	DO			
19	B 2560	MICHAEL FLUS	DO			
20	B 2561	JOSEPH PISSARENSKY	DO			
21	B 2562	REYNARD MATHIAS	DO			
22	B 2563	PAUL JASPER	DO			
23	B 2564	BRENT GROVES	DO			
24	B 2565	LOUIS PEREZ	DO			
25	B 2566	TAYLOR JONES	DO			
26	B 2567	JAMES REAHE JR P	DO			
27	B 2568	LOUIS FORD	DO			
28	B 2569	IVORY PERRY	DO			
29	B 2570	MARTIN RUSSELL	DO			
30	B 2571	MICHAEL KLEIN	DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278–80M-701524(63) 114

CRIMINAL COURT OF THE CITY OF NEW YORK

PART 18 COUNTY OF QUEENS WEDNESDAY DATE MAY 6, 1964

JUDGE _____ DIST. ATTY _____ REPORTER _____

Cal No.	Docket Number	Defendant	Offense	Officer & assignment	prev. adjs.	Disposition
1	B 2513	JACQUELINE BUTLER	1851 PL	BRODERICK-W F POL		
2	B 2514	ALICE JACOBS	DO			
3	B 2515	BONNIE BRIDGE	DO			
4	B 2516	GLADYS MOORE	DO			
5	B 2517	TONI ROBINSON	DO			
6	B 2518	RONEL JENERA	DO			
7	BM2519	DELORES QUINTYNE	DO			
8	B 2520	SHEILA JAMPEL	DO			
9	B 2521	CYNTHIA POST	DO			
10	B 2522	SYLVANIA FOA	DO			
11	B 2523	GENEVA YOUNG	DO			
12	B 2524	GEORGETTE KASAN	DO			
13	B 2525	RUTH RODRIGUEZ	DO			
14	B 2526	BOOKER MOORE	DO			
15	B 2527	DANIEL CHERNOFSKY	DO			
16	B 2528	JERRY COHEN	DO			
17	B 2529	HARRIET PUTTERMAN	DO			
18	B 2530	PAT WALKER	DO			
19	B 2531	ARLENE BOCH	DO			
20	B 2532	JOAN FOSTER	DO			
21	B 2533	FLORENCE MILLER	DO			
22	B 2534	JUDITH JASMIN	DO			
23	B 2535	HELEN GEIGER	DO			
24	B 2536	ELIZABETH ADLER	DO			
25	B 2537	JEFFREY MITCHELL	DO			
26	B 2538	ROBERT CURVIN	DO			
27	B 2539	HERBERT HARDY	DO			
28	B 2540	JONATHAN HARRIS	DO			
29	B 2541	FREDERICK WINTER	DO			
30	B 2542	JOHN FISHER	DO			

	Total	Disposed	Adjourned
NEW CASES			
OLD CASES			

Form 278–80M-701524(63) 114

Y = claiming Youthful Offender under 19 when arrested

WORLD'S FAIR — 5/28/1964 - Rev.

		NAME	ADDRESS	TELEPHONE	DATE	
		Abel, Katy	26 Summit Av. Larchmont, NY		6/17	
B 2400, 83		Abrashkin, Wm.	220 W 104 NYC		~~6/9~~	
1302 1334 1318		Adkins, Albert	201 Clinton Ave Dhlw			C-22
		Adler, Elizabeth (ER)	250 E 105 NYC		6/9	
B 2414, 97						
✓	§	Alexander, Sue 2276,7	2050, 2d Ave. New York City			
✓	§	Alper, Donald 2322,3	275 Babcock Rm.917 Bill Dorm			
		Amlin, P.	701, Irving Syracuse	475-9702		
		Amdur, Steve 2426	855 W.End Av. New York City	UN4-2653	6/8 (SS)	
		Anderson, Franklin	177-44 Saisley Bvd. So. Jamaica			6-17
✓	§	Asgerssson, Eula 2237,8	245 E., 110 St. New York, N.Y.			
✓		Banks, Gilbert. 2210,11				
		Banks, Hamilton II III	118-17, 153 St. Jamaica, N.Y.			
		Bardin, Hillel	19 W. 65 St. New York, N.Y.	MO6-8763	6/17	
✓	§	Barron, Jerry 2245				
B-2403, 86		Barton, Michael	315 E 65 St NYC			
B-2498, 2501		Bascoe, Monique	4105 Cote des neiges - Montreal Canada			6-22
		Baumann, Holly	612-16 Aspex Pl. Forest Hills		6/8	6-17
III	1185 1191	Beacholor, Wm.	92-42 185 St Jamaica		6/7	
		Bell, Virginia	Gen. Del. Clinton, La.		Defaulted bail	
B-2482		Beiber, Thos. (ER)	607 Fennald Ave Conn (?)			
		Berman, Andrew	173-09 Jewel Av. Flushing			6-17

B-2409, 92		Boch, Arlene	33 Watkins Av - Woodbury, N.J.		
		Bohonan, Farmanica O			
		Boockcheim. Murry	27 E, 13 St. New York, N.Y.		6/17
	✓	§ Bonner Rebecca			6/12
		Bosco, Monique	4105 Cote des Neiges Montreal, Canada		
III	1146 1149	Brady, Mark	111-31 77 Av Forest Hills		
		Braddock, Geo O			
	✓	§ Braverman, Jan	Box 1931 Brett Hall Rutgers, N.Greenwich, N.J.	CH7-8699	6/5 6/17
		Brogan, Patrick	521 Furn ald Hall	MO6-5000	
III	1321 1305	Brown, Bill	513 W Carolina Talahasee Fla		6/9 6-22
	✓	§ Brown, Claudia	209-35 112 Av Jamaica		5/28
		Brown, Emmelda	411 Bedford Av. Mt.Vernon, N.Y.	MO8-4765	6/17
		Brown, Marshall	84 Ravine Av. Yonkers, N.Y.	YO3-7190	Bail revoked 6/9 6-22
		Bubabin, Geo. O			6/17
IV	1166 1168	Bulkin, Joel	71-61 162 St Queens		6/22
		Butler, Jacqueline 1346	St. Louis	FO1-1341	X
III	1346 1405 1422	Canado, Frederick	110-29 172 St Jamaica		Sale 7-22 pb III
B-2405, 88		Chernosfky, Daniel	333 Ovington Av - Bklyn 85 Christie St NYC		
III	1138 1140-01	Chernowitz, Alex	(Private Counsel)		6/8©
	✓	§ Clark, John	Box 6418, U. of Rochester	CH4-8200 C-01	6/15
III	1299 1315 1331	§ Clark, Jimmie	109-26 142 St Jamaica		6/9 6-22
		Clayton, Morris O			
		Cohen, Jerry 2406	600 W., 113 St New York, N.Y.	UN4-9243	X
	✓	§ Conway, Dorothy			5/28
	✓	§ Cook, Ronnie			5/27
III	1306, 1322 1338	Corbett, Phyllis	69 Pinehurst Ave NYC		6/9 6-22

Callender, Herbert
755 E 188 6/8

III 1205	Coy, Ronald	142 Mc Dougal St		1919 6/8
	Crowner, Dzvid	160 Bevier Rd. Rutgers N.Brunswick, NY	246-1748	5/22
B-2361, 2447	Curwin, Robert	136 W. Market St.	623-9157	
	[Rob Curwin - 106 Huntington Ter. Newark NJ - NB: 623 is a new NJ #]			
✓ §	Dantzler, Thelma			
	Davis, Ivey	1706 Davidson Av.	914MO8-4765	Defaulted bail =
	Davis, Mars	Box 1, Clinton, La.		
III 1172, 3, 4	Davis, Paul	107-38 159 St. Jamaica		6-17 =
	Davis, Roy			6/17
	Dibliase, Benjamin O			
III 1193 1196	Dickson, John	104-30 203 St		=
III 1233, 40, 47	Digilio, Joseph	39-67 47 St L.I. City		
B-2454, 54	Dis. Peter [Dix]	525 W 113 St. NYC		
	Dixon, John			
III 1297 1313, 1324	Doctor, Henry	2013 5th Ave NYC		6/9 6-12
✓ B-2231??	Doe, John	no address see HIST, OWEN		
	Dravich, Jay	81-10 135 St. Kew Gardens, NY	BO8-2724	
	Drew, Joseph	1301B New Hall Col. U.	MO6-9000	
III 1235, 42, 49	Dubuman, David	360 Riverside Dr NYC		
III 1298 1314, 1330	Due, Patricia	Talahassee CORE Florida	Rte 2 - Box 37 Quincy, Fla.	6/9 6-12
? ✓	Dukes, Rever. (NELSON C.?)			6/23
	Durham, Steve v377	31E, 7 St. New York, N.Y.		
✓ §	Einhorn, Carl	68 Montague St.	MO2-8751	
	Eisenberg, Eric	387E, Mosholo Pkw. New York	OL2-2916	6/17 Pr3
	Ender, Eric O			6/17
	Epstein, Howard	48-29 190St. Flushing	FL7-7399	

Delgado, Rafael A. MOE102 5/18

PRBW

B-2380 Espada, Frank 245 Wortman Bklyn

Farber, Tedi 537 E., 6 St. New York, N.Y, OR4-6123

✓ § Farmer, James A. 38 Park Row NYC CO7-6270

B-2502,85 Farrar, Winifred 130 Fairview - Teaneck N.J.

Farmain Barbara

Feingold, Paul 2429 205 Albany Av. Brooklyn PR3-3715

Feist, Fritz 6 E, 74 St. NYC TR9-0126

✓ Ferguson, Earthline [Dismissed]

Fielding, Dorothy 2226 3001 B'way NYC UN5-9000 6/1

Fisher, John 2370 33-47 14 St. LIC

✓ Flesch, Walter

Flug, Michael 237W,105 St. NYC MO3-6426

Foa, Sylvania 3001 B'way. UN5-9000

Forbes, Wm. 232 E, 6 St. NYC CA8-4647

Ford, Louis 4566 Kensington JE5-7898

Foster, Joan 984 Findlay JE8-1794

✓ § Fruchter, Norman 6/4

1366, 80, 90 Gabnielsky, Rob. 1366 6/7

Galper, Jeffry

B-2413,96 Geiber, Helen 181 E. 2nd St.

✓ § Gethers, Joan 6/1

Gilbert, Nelson 807B.,77PW Columbia U. MO6-9000

Gilford, Lisa (She is 17. Her parents belong to 7 Arts)
75 Bank st. NYC OR5-8891 6/23 P+3

✓ Gilmartin, Allan 6/9

✓	§	Glover, Gular			
		Glusakow, Bruce	87 E., 3 St.(18) NYC	OR4-0857	
✓	§	Gordon, Paula	2050, 2d Av. NYC		18/91 6/8
✓	§	Gould, Paul			
III	1126,7,8	Green, Ed Smith ? (ED 5-6)	5808 Tanaqueh Rd Bklyn		
✓	§	Greaan, Ernest			5/28
✓	§	Greenberg, Michael		201CL4-1195	
III	1304,20 1336	Gripper, Vernall	310 M St Wash D.C.		6/9 6-22
		Groves, Brent(ER)	365W, 25St.(7E) NYC	CH2-8477	
✓	§	Gruzen, Marjorie(ER)			
III	1142,3	Gutman, M.	157-24 20 Rd. ?		6/8
✓	§	Hahbohm, Wm.	261 Broad St. Bridgeport, Conn.		Defaulted bail
B-2422, 2505-		Hall, Loreta	1510 Biddle St. Louis (?) ?	MA1-1190	
III	1133,7	Heinigg, Paul	151 ~~Nadowah~~ St Bklyn HIDWOOD S		5/27 P+3
		Hardy, Herbert	4418 Delmar St. Louis	FO1-3285	
III	1134,5	Hardy, Walter	426 Baltic St Bklyn		5/27
III	1115 1121	Harrington, Donald	Community Church 10 Pk Ave NYC		5/17
III	1114,20	Harrington, Michael ?	43 Carmine St		6/17
		Harris, Clayton	100-39 205 St. Hollis, LI		6/3
		Harris, Jane	101 Av. B New York	OR3-8721 SP7-3888	
		Harris, Jonathan	101 Av. B New York	OR3-8721	
✓	§	Harris, Mary			6/8 6-17

Harris, Robert — 343 E, 8 St. NYC — SP7-9019

✓ Heifetz, Henry — 6/9

✓ § Hewitt, Sarah — 6/17

Hist. Owen (see J. Doe) _____?

Hobbs, Lanorres or Hookes, Loutras — 516 E 6th St NYC — Talahassee CORE — 6/9 — 6-22

1307

Holpert, James

✓ § Horowitz, Rachelle (ER) — 5/28

Hurwitz, Thos. — 43W., 93 St. NYC — RI9-4335

B-2457, 2546 Hutchings, Vician — 214 Orange St. Newark N.J.

B-2458, 2547 Insolia, Joyce — 27 Marquett Rd. Greenlagon L.I.

✓ § Jackson, Blyden — 5/22

B-2347 2514 Jacobs, Alice — 217 16- Ft. Lee, N.J.

B-2506, 89- Jacobs, Martin — 217 B Central Rd Ft. Lee, N.J.

B-2391 B-2480 Jaffe, Robert — 98-30 67 Ave Queens

Jampel. Sheila — 768 E, 21 St. Brooklyn — GE4-2424

B 2495 Jasmin, Judith — 3600 Ridgewood Montreal, Canada

Jasper, Paul — 68 W., 106 St NYC — UN6-2289

1308, 24, 40 Jenkins, Loren (ER) — 205 E 105 St ~~NYC~~ NYC — ~~Union Settlement NYC~~ — 6/9 — 6-22

Johnson, Marjorie

Jones, Jimmie — 177-11 197 St. St. Albans — 5/22

	Jones, Taylor	2704 Ill.St. E. St. Louis, Ill.	UP5-4243	
III 11/55,60	Jones, Wm.	1657 Merrick Rd		5/22
	Kagan, Georgette	617W., 113 St. NYC	RI9-5281	
III 1911,17	Kahn, Thos.(ER)	397 8 Av NYC (?)		6/17
	Kalimigis, Gujs o			
III 12/68,82	Kehol, Katherine	31 Monroe St.		
	~~Kalengert, Gus~~ or Kanelbgert			
	Kalin, Thos. o			5/18
III 11/89,96	Kalintgis, Gus	98-10 139 St- Flushing		
	Katz, Jeffrey	1800 Davidson Av. Bronx	TR2-5449	
III 1361,75,93	Keary, Ershine	164 6th Ave. NY		6/17
✓ §	Keith, Frances			
✓ §	Kerr, Eva (ER)			6/9
	Keven, Elliot o			
✓ §	Kinsler, Michael			
	King, Everett	St. Louis	FO1-5028	
	King, Ernest	75-57 263 St. Glen Oaks, N.Y.		5/28
	Klein. Michael	259 Clinton Pl. Newark	WA6-5460	
✓ §	Komatsy, Kit			
✓ §	Larsen, Robert			5/22 6-17
	Lawson, Carol	Box 5952 U. of Rochester	634-CH4-8200	

KOPLIN, PHILIP 279 Henry 5/26

	Leicester, Elizabeth	119 Waverly Pl.	GR5-1372'	6/23	
✓ S	Lippert, Marla	48-36 190 St. Flushing		6/12	
III 1132, 6	Levy, Builder (LEROY)	239 Bay 22 St Bklyn		5/27 P+3	
IV 1175, 76, 77	Little, Wm.	89-50 146 St			6-17 =
	Lloyd, Robert	435 Riv. Dr. Chi (?)	NE8-5178		=
B-2382, 2465	Louis, Joseph	East Riv. CORE 129 Suffolk St NYC		6/8	
✓ S	Ludwig, Gilbert	Box 706 142 Ford Hall Rutgers, New Brunswick, N.J.	CH7-1766 X6247		6-17
III 1146-7	Lymis, Carlyn	104-09 45 Rd		6/8	6-17
✓	Madison, Wm.				
	Maidman, Paul	110 Furnald Hall	MO6-5000		
B-2478, 2511	Manuel George	570 Lexington Ave. Bklyn			
III 1198 1207	Mapp, Thos	164-32 109 Rd ?			
	Mappori	164-32 109 Rd. Jamaica			
I-A 1898, 9, 00	Margolies, Michael	~~✓~~ 117 Ludlow St NYC			
III 1202, 03, 04	Markman, Barry	25 28 Cruger St Bronx		~~6/11~~ 6/8	
	Marchand, Jacques (leaving US 6/27)	Box 568 Rutgers New Brunswick	CH7-1766 EX6247	5/22	
III 1194, 1197	Martin, Rubin				
B-2570, 2477	Martin, Russell	191 2nd Ave. Westbury, L.I.			
✓	Martinez, Nicassio			5/28	
~~S~~	~~Meyers, Robin~~			~~5/22~~	

myst Jg.

Miller, Florence	3784, 10 Ave. NYC	LO9-6368	
Miller, Robert	220 W.,104 St. NYC	UN5-1718	6/16
Miller, Wm.	210 Bevier Rd. Rutgers New Brunswick, NJ	CH6-0989	
Miranda, Victor Jr.	East Riv. CORE 170 E. 107 St NYC		
Mitchell, Eliz.	604 W., 115 St NYC		
Mitchell, Jeffrey	604 W., 115 St. NYC		
Moore, Booker	4030 St.Ferdinant St. Louis	CE1-8943	
Moore, Gladys	1551 Carr. Dr. St. Louis	CE1-8943	
Murply, Maurreen		6/8	6-17
Myers, Robin		5/22	
McCormick, Bob	3150 Bway. NYC (?)		6-18
McLaughlin, Andrew	26 Mineola St.	BE5-6345	
Napper, Marjorie			6-18
Nelson, Robert	350 W., 18 St. NYC	WA9-4241	
Nevin, Randy			
Neogs, Robert		6/7	
Norton, Carl	28-13-79-St. Elmhurst.		
Nyden, Paul	708 New Hall Col. U.	MO6-9000	
Oesterreichter, Arthur	1075 Liachis Av Teaneck, N.J.		
O'Gorman, Joan	173 Jane St. Englewood, N.J.		
Oliver, Jim	342 W., 71 St. NYC	TR3.5999	
Oliver, Harvey	478 Belmont Av. Newark	BI3-1624	

	Oliver, Melvin G			6/17 P 3	
1-A 1897 1901-OV	Padow, Robert ~~X~~ 115 W 23rd NYC				
	Paduce, Michael G			5/22	
	Padwee, Michael	19 Union St. New Brunswick NJ	CH7-1766 EX 6247		
B-2317 ✓ S	Palmer, Christine	(Private Atty.) ✓ Statham		6/3	
	Pam, Robert	714 Livingston H.	MO3-6600		
III 1144-5	Parlin, Jeanne Lee	177-49 105 Ave		6/8	6-18
✓ S	Patterson, Susan			6/8	6-17
✓ S	Pauly, Joan			6/8	6-17
III 1213, 19	Peck, James	55 ✓ Riverside Drive		6/17	
B-2391, 2474	Peake, James Jr.	St. Louis	3424 E. B'way St. L. Mo		
	Penny, Gerald G				
III 1311, 27, 43	Perdu, Lane	Nat'l Conv. Office		~~5/22~~ 6/9	6-22
	Perez, Louis	237 W, 105 St. NYC	MO3-6426		
	Perlmutter, Steve	1436 Clay Av. Bronx, NY	JE7-6522		
B-2569	Perry, Ivory	511 Raymond st St. Louis	FO1-1253		
III 1186, 92	Peters, Steven	141-19 71 Rd Flushg			
	Phillips, Modistine	(St. Louis)	EV5-3957		=
✓ S	Pierce, Judith				
B-2385, 2468	Pissarevsky, Jos.	555 Rutherford Av. N Y C.			
1376	Plummer, Lucille	177 Palma St. St. Augustine Florida	FL4-3690	Bail revoked	6-22 ?

Pollock, Danny — 5208A Cabonne, St. Louis — FO1-3285

B-2437, 2531 — Post, Cynthia — 69 McDougal St. N.Y.C.

B-2220, 1 — Posner, Bruce — 15 - 8th Ave N.Y.C.

B-2407, 90 - Puetterman, Harriet — 348 E. 18th St. N.Y.C.

B-2352, 2435 — Quintyne, Delores — 813 Bayview Ave. N.Y.C.

B-2383, 2446 — Rabin, Julius — 14 Bedford St Bklyn.

✓ § — Reer, Karl V.

✓ § — Reyes, Helen — 5/28

✓ — Rice, Kenneth — 6-18

III — 1301, 17, 33 — Roberson, Frank — 717 Green Ave Talahassee - Fla — FILED 6/9 — 6-22

III — 1303-19, 35 — Roberts, Eda — 511 H St Wash D.C. — FILED 6/9 — 6-22

B-2397 2480 — ~~Robert, Jaffe~~ — 98-30 67th Ave Queens — Schaffer

(belongs in "J", supra p. 6)

~~Robert, Lloyd~~ o

~~Robinson, Louis~~ o

Robinson, Toni — 2170 Univ. Av. — SE3-1916

B-2358, 2441 — Rodriguez, Ruth — 1047 Faile St. Bronx

Rone, Jemera — 3001 B'way. NYC — UN5-9000

Rodenko, Igal o — 6/17

✓ — Rose, Janet — Washington DC — Defaulted bail 6/17

IV — 1356, 1416, 1432 — Rose, Joshua — 33-04 91 St Jackson Hts — 5/15

	Rosinsky, Joel	208-22 Bardwell Av. Queens			
✓	Roti, Vincent				
	2225				
	Rubin, Martin	33-05 90 St. Jamaica			
	Rushing, Byron	706 Almond St. Syracuse	476-0770		
III	1268,81 Rushing, Lawrence	170-18 118 Ave			=
✓	§ Rustin, Bayard	War Resisters' League			
	Sabler, Sandra	30-25 W. 32 - Bklyn		6/17 P 3	6/18
III	949 60 1195 1130,1 Schapiro, Robert	419 Furnald H.	Mo6-5000		
✓	✓ § Schmidt, Thos.	507 W., 113 St. NYC	MO6-2146 UN5-4000 (Ex.3195)	6/8	6-17
B-2281 not in list	Schultzer, Martin	B-2212		4/22 - AB 4 5 or 15	
✓	§ Schwanschild, Henry				
	Scott, Earl O B-2424			Schafer	
III	1357, 1419 B33 Shaftel, Ann	39-15 45 St L.I.C.			
	Sharrow, Elouise L. O				
III	1367,81,99 Shatkin, Norman	437 E 12 St		6/17	
	Sherman, Eugene	62 Park Terrace W. NYC	LO9-1972		
III	1370,84 1402 Shitkin, Joan	437 E 12 St		6/17	
	Siegel, Larry	237 Thompson St. NYC		6/17	
III	1309,25,44 Sklar, Eugene	103 Hammel Pl Union Settlement NYC		6/9	6-22
III	1232, 46, 51 Slutzky, Martin	48-07 39 Ave L.I.C.			
B-2498	Solganick, Allen	4303 Rowalt Dr Ins.			

Scott, Robt C. 5/12 - Acq. —

	Starzynski, Susan	701 Irving Syracuse	475-9702	
	Statman, James	37-06 89 St. Jackson Hts. NY	OL1-1855	
B-2201 missing	Stein, Robert V.			
	Stelling, John	4254 Bates St. Louis	FL2-3796	
	Sterling, John			
	Stephens, Patricia (Priscilla)	14620 Filmore St. Miami, Fla.	CE8-1965	6/9 BW-stay over till 6/16
	Straus, Arthur	48 Stanley Rd. So.Orange, NJ	SO2-7776	
	Streator, Geo.	70 SaSalle St. NYC	TR9-3100	
	Sutlife, Jack of			
✓ §	Taylor, Frances			6/11
✓ §	Taylor, Sandra			6/11
III 1126,7 948,61	Teahan, Jeremiah	9008 Flatlands Av Bklw		6/17 P 3 6-18
	Tenney, Gerald	2776 Jerome Ave NYC	LU4-3952	
III 1353, 1415,29	Terrell, Peggy	3304 Junction Blvd - Jackson Hts.		
✓ §	Thompson, John			
	Tishman, Mark	316 W. 90 St. NYC	TR3-9995	
III 1120,21	Torgoff, Stephen	290 W End Av		6/17 P 3
III 1274,87	Trestman, Irene	473 W. End Av		
III 1428	Tristan, Israel	937 Grecian Pt. Rd Hyannis? NY		
	Tournour, Eugene	5700 W.Minister St. Louis	PA7-5641	

(? Sutcliff, Ralph 6/19)
B-2239 840 Gr. Concourse Bx

Starzynski, Susan	701 Irving Syracuse	475-9702		
Statman, James	37-06 89 St. Jackson Hts. NY	OL1-1855		
Stein, Robert V.				
Stelling, John	4254 Bates St. Louis	FL2-3796		
Sterling, John				
Stephens, Patricia	14620 Filmore St. Miami, Fla.	CE8-1965	6/9	BW-stay over till 6/16
Straus, Arthur	48 Stanley Rd. So.Orange, NJ	SO2-7776		
Streator, Geo.	70 SaSalle St. NYC	TR9-3100		
Sutlife, Jack				
Taylor, Frances			6/11	
Taylor, Sandra			6/11	
Teahan, Jeremiah	9008 Flatlands Av Bklyn		6/17 P 3	6-18
Tenney, Gerald	2776 Jerome Ave NYC	LU4-3952		
Terrell, Peggy	330 of Junction Blvd - Jackson Hts			
Thompson, John				
Tishman, Mark	316 W. 90 St. NYC	TR3-9995		
Torgoff, Stephen	290 W. End Av		6/17 P 3	
Trestman, Irene	473 W. End Av			
Tristan, Israel	937 Grecian Pt. Rd Hagonac? NY			
Tournour, Eugene	5700 W.Minister St. Louis	PA7-5641		

(? Sutcliff, Ralph 6/19)
B-2239 840 Gr. Concourse Bx

Vanderus, Kay	500 Hudson or c/o Miller 38CPS NYC	PL8-3139 PL8-3139	
Wagner, Norma	253 Rosedale St. Rochester, NY	AR3-9431	
Walker, Margaret			6/7
Wallerstein, Les	225 W, 106 St. NYC	MO3-3435	
Wallerstein, Joan	225 W, 106 St. NYC	MO3-3435	
Wallerstein, Steve	397 Thornton St. So. Orange, NJ	SO3-0783	
Walker, Pat			
Weinerman, Diane	205 W.End Av. NYC	TR4-0378	
Karen Weingeist	180-33 80 Dr.		6/17
§ Weinstock, Rosalind			6/11
Weinstein, Judy	587 Riv. Dr. NYC	AU3-4488	
Weinstone, Laurie	39-67 47 Ave LIC.		
Weisman, Dena	59-15 47 Av. Woodside, NY	HA9-6497	
Weiss, Joel	48-50 37 St. LIC		5/22
West, Frederick	377 Jefferson St—		6/24 P 3
Westerfield, Barbara	624 Norton Kirkwood 2075 1st Ave NYC	406-4385	
§ Widman, Donald			Defaulted bail
§ Wilson Theodore	MO5-1634(X403)		6/8 6-17
Winter, Frederick	243 Rugby Rd. Brooklyn	UL6-5058	

✓ §	Wright Alberta			5/28
	Yearwood, Carlisle	523 W., 149 St. NYC	UN4-8923	
	Young, Andy	116-51 157 St. So. Jamaica		6/4 P 1A sent 3/9
	Young, Geneva	5714 Maple St. Louis		
✓ §	Zagarell, Allen	175 Rivington NYC	OR3-4751	6/11
	Ziefert, Marjorie	214-04 53 At. Queens	BA9-8542	
B-2462 v379.	Zinn, Sheldon			
	Zulkin, Joel	71-61 162 St. Flushing		

Zagarell, Michael — 6/9

WORLD'S FAIR

JUNE 18, 1964 REV

	NAME	ADDRESS	TELEPHONE	DATE
	Abel, Katy 1368 (F)	26 Summit Av. Larchmont, N.Y.		Sen. 6/25
	~~Abrashkin, Wm.~~ ~~B-2400,83--(S)~~	~~220 W. 104 St.~~ ~~New York, N.Y.~~		~~6/17~~
	Adkins, Albert 1302,34-18 (F)	201 Clinton Av. Brooklyn, N.Y.		~~q6/22~~
	Adler, Elis. (ER) B-2414,97 (S)	~~250 E., 105 St.~~ New York, N.Y.	Warrant	6/17
§	Alexander, Sue B-2276-77 (City)	125 E., 106 St. New York, N.Y.		Sent. 6/19
§X	Alper, Donald B-2322-23	~~275 Babcock~~ Rm. 917 Bill Dorm.		6/11 BFBW
	Amlin, P. ~~B-2426~~ (?)	701 Irving Syracuse	475-9702	6-17
	~~Amour, Steve (S)~~ ~~New York~~	~~855 W. End Av.~~ ~~New York, N.Y.~~	~~UN4-2653~~	~~6/17~~
[	Anderson, Franklin 1169 (US)	177-44 Saisley Bvd. So. Jamaica, N.Y.		(SS) ~~6/26~~
§	Asgersson, Eula B-2237,8 (City)	245 E. 110 St. New York, N.Y.		Sent. ~~6/9~~ 6/19
	Banks, ~~Hamilton~~	118-17, 153 St. Jamaica, N.Y.		
[	Bardin, Hillel 1212 (City)	19 W., 65 St. New York, N.Y.	MO6-8763	6/30

[	Bauman, Holly 1148,49 (US)	612-16 Aspex Pl. Forest Hills (NY)		~~6/26~~ 8-25 L-B
[	Beacholor, Wm. 1185,91 (US)	92-42 185 St. Jamaica, N.Y.		~~6/26~~ 8-25 L-B
[X	Bell, Verla 1216 (City)	Gen.Del. Clinton, La.		(Defaulted Bail) (6/17)
[	Berman, Andrew 1178 (US)	173-09 Jewel Av. Flushing, N.Y.		~~6/26~~ 8-25 L-B
	Bohonan, ~~Farmanlea~~ Barbara 1197 (US)	104 York New Haven, Conn.		~~6/19~~ 7-9 L-B t
[	Boockcheim, Murray 1365 (F)	27 E., 13 St. New York, N.Y.		Sent. 7/14 (III)
	Bonner, Rebecca B-2256,7 (US)	45 W., 90 St.	TR3-1732	~~6/23~~ 8-25 L-B
	~~Braddock, Geo~~			
	Braverman, Jan B-2280,79 (US)	Box 1931 Brett Hall Rutgers		~~6/23~~ 8-25 L-B
[	Brown, Bill 1321,1305 (F)	513 W. Carolina Talahassee, Fla.		~~6/22~~ 8-11 L-B
§	Brown, Claudia B-2304,09 (City)	~~209-35 112 Av.~~ Jamaica, N.Y.		Sent. 5da 6/19
[	Brown, Emmelda q 1371 (F)	411 Bedford Av. Mt. Vernon, N.Y.	MO8-4765	Sent. ~~6/25~~ 7/1-
[	Brown, Marshall 1300 (F)	84 Ravine Av. Yonkers, N.Y.	YO3-7190	Bail reinst. ~~6/22~~ 8-11 L-B

[Bulkin, Joel
1166,68, (US)
71-61 162 St.
Queens, L.I.
~~6/22~~ 7-28

~~Canado, Frederick~~
~~1346,1408,22 (S)~~
~~110-29 172 St.~~
~~Jamaica, N.Y.~~
~~6/19~~
dism

Chernofsky, Daniel
B-2405,88
333 Ovington Dr.
Brooklyn, N.Y.
SH 5-3608
all dism
was at Hunter
dentistry NYCCC - said didn't see all H. students
gd → (F)

§X Clark, John
B-2337,39 (NYC)
Box 6418
U. of Rochester
CH4-8200 C-01
~~6/15~~
deferred

§ Clark, Jimmie
1299,1315,31 (F)
109-76 142 St.
Jamaica, N.Y.
~~6/22~~ 8-11

Clayton Morris

§ ~~Conway, Dorothy~~
B-2240 (City)
111-04 204 St.
Jamaica, N.Y.
Sent.
6/19

§ Cook, Ronnie
B-2283,4 (US)
611 E., 6th St.
New York, N.Y.
~~6/23~~ 8-25

[Corbett, Phyllis
1306,22,38 (F)
69 Pinehurst Av.
New York, N.Y.
~~6/22~~ 8-11

X[Cohen. Karen
1292 (F)
510 Riverdale
Yonkers, N.Y.
~~6/22~~ 8-11

§ Dantzler, Thelma
B-2314,5 (City)
187-22 Keyville St.
~~Queens, N.Y.~~
Sent.
6/19

[Davis, Ivey
1393 97 1405 (F)
1706 Davidson Av.
914-MO8-4765
Sent.
6/25
7/1

Davis, Mars
Box 1
Clinton, La.

Coy, Ronald (Sidney)
8/3

[	Davis, Loria 1210 (City)	Box 1 Clinton, La.		BF
	Davis, Paul 1172,3,4 (US)	107-38 Jamaica	159 St. q	(6/17) BFBW
	Davis, Roy			6/17
	Dibliase, Benj.			
c	Dickson, John 1186,93 (US)	104-30	203 St.	~~6/19~~
[	Doctor, Henry 1297,1313,1329 (F)	2013 5th Av. New York, N.Y.		~~6/22~~
	Doe, John (Maybe B-2231,32,33)	(See Hist, Owen)		~~6/19~~
	Due, Patricia (F) 1298,1314,1330	Talahassee CORE Florida, Rte.2, Box 37, Quincy, Fla.		~~6/22~~
§	Einhorn, Carl B-2328,9 (City)	~~68 Montague St.~~	~~MO2-8751~~	~~Sent.~~ 6/19
[	Eisenberg, Eric 1255 (NYS)	387 E. ,osjolo Pkw. New York, N.Y.	OL2-2916	(6/24) ~~6/17~~ P-3
@ [	Epstein, Howard 1190 (US)	48-29 190 St. Flushing	FL7-7399	~~6/19~~
z	Farber, Tedi 1164 (City)	~~537 E., 6 St.~~ ~~New York, N.Y.~~	~~OR4-6123~~	~~6/23 P-III~~
§	Farmer, James A. B-2300,2305 (City)	38 Park Row New York, N.Y.	CO7-6270	Sent. 6/19

Feist, Fritsie(?) 6 E., 74 St. TR9-0126

Ferguson, Earthline 121 W., 123 St.
B-2226

[Gabrielsky, Rob,
1166,80,90

Sent. 6/11

§X Gethers, Joan 1452 Wilkens Av. Sent.
B-2318,9 Bronx, N.Y. 6/19

Gilbert, Nelson 807B. 77PW MO6-9000 6/19
1347 (S) (dancer) Columbia U.

[Gilford,Lisa (She is 17. Her parents belong to 7 Arts)
1184 75 Bank St. OR5-8891 6/23 P-3
New York, N.Y.

Gilmartin, Allan 250 Mount Vernon Pl. 6/18
B-2310 (City) Newark, N.J.

Glusakow, Bruce 87 E., 3 St. (18)
1351 New York, N.Y. OR4-0857 6/19

§ Gordon, Paula 2050 2d Av. Sent.
B-2274,5 New York, N.Y. 6/19

GORDON Richard 22 Andiz Ave. 6/20 8/11
1295 Hewlett L.I.

Gould, Paul 86 Seneca St. 6/17
B-2342,3 (NYS) Binghampton, NY

Green, Ed.Smith 5808 Faragut Rd. 6/24
(Smith-Green, Ed.)
1226,7.8 (City) Brooklyn, N.Y.

§X Green, Ernst 397 1st Av. MU4-4094 Sent.
B-23 01,06 (City) PR3-1313 6/19

§X Greenberg, Michael (US) — 2254 3d St., East Meadow, LI — 201CL4-1195 — 6/23 8-25

Gripper, Vernall 1304,20,36 (F) — 310 M St., Washington, D.C. — 6/22

§ Gruzen, Marjorie (ER) 2332,3 (City) — 437 E., 12 — 6/15

Gutman, M. 1142,3 (City) — 157-24 20 Rd. — 6/23 8/7

§ Hahlbohm, Wm. B-2341,38 (NYS) — 261 Broad St., Bridgeport, Conn. — Sent. 6/19

Heinigg, Raul 1133,37 (Subway) — 151 Midwood St., Brooklyn, N.Y. — 6/1

Hardy, Herbert B-2362 (S) — 4418 Delmar, St. Louis — PO1-3285 — dism 6-17

Hardy, Walter 1134,5 (Subway) — 426 Battic St., Brooklyn, N.Y. — 6/11

[Harrington, Donald 1215,21 (City) — Community Church, 10 Park Av. N.Y. — 6/25 acq'd, 3 Man Court

[Harrington, Michael 1214,20 (City) — 43 Carmine St. — Sent. 6/30

Harris, Clayton XXX B-[redacted] 1139 (US) — 100-39 205 St., Hollis, L.I. — 6/12 (7) 6/17 → 6/25

Harris, Mary (US) — 9 Hemmingway Av., New Rochelle, N.Y. — 6/23 8-25

[Hawley, Ellen 1116 (Room + W's Pt.) — 10 Pershing Av., Yonkers, N.Y. — 6/12

[	Harris, Robert 1261 (NYS)	343 E, 8 St. New York, N.Y.	SP7-9019	~~6/24~~ 7-27 2B
	Heifetz, Henry B-2254,5 (City)	39 W., 87 St. New York, N.Y,		7/2
§	Hewitt, Sarah B-2281,2 (US)	3350 Perry Av. Bronx, N.Y.		~~6/23~~ 8-25 2B
	Hist, OWEN (John Doe?) B-2231,2,3 (Outside Fair)			~~6/19~~ 6-26
[	Hobbs, Lanorres or Hookes, Loutras 1307 (F)	616 E., 6 St. NYC Talahassee CORE		~~6/22~~ 8-11 2B
~~SX~~	Horowitz, Rachelle (ER) B-2303,08 (City)	311 W., 24		Sent. ~~7~~ 6/19
[	Hurwitz, Thos (city).	43 W., 93 St.	RI9-4335	~~6/19~~ 96 Pierce ave dropped Sent 7-9
	Jasper, Paul B-2387 (S)	68 W. 106 St. New York, N.Y.	UN6-2289 (in Europe (??)	C-17 bail BFBW reinstated 9-14 I-B
[	Jenkins, Loren (ER) 1308,24,40 (F)	205 E., 105 St. New York, N.Y.		6/22 8-11 2B
	Johnson, Marjorie (?)			
[	Jones, Jimmie 1150 (US)	177-11 197St. St. Albans		~~6/26~~ 8-25 2-B
	Jones, Taylor B-2390 (S)	2704 Ill. St. E. St. Louis, Ill.	618-UP5-4243	~~6/16~~ 6/17 4 down
[	Jones, Wm. 1155,60 (US)	2657 Herrick Rd. Belmore L.I.		8-25 ~~6/26~~ FF 2-B

Kahn, Thos, (ER) — 397 8th Ave. — 6/30
1211,17 (City) — New York, N.Y.(?)

~~Kehol, Katherine~~ — ~~31 Montoe St.~~ — ~~6/25~~
1269,82 (NYS)

Kalintgis,Gus. — 88-10 139 St. — ~~6/19~~ 7-9 2-B +
1189,96 (US) — Flushing, N.Y.

~~Katz, Jeffrey~~ — ~~1800 Davidson Av.~~ — ~~6/25~~ offered adj division
1263 (NYS) — Bronx, N.Y. TR2-5449
further UN3-6258.

~~Keary, Ershine~~ — ~~264 6th Ave.~~ — ~~Sent.~~
~~1361,75,93 (F)~~ — New York, N.Y. — ~~6/25~~ 6-19 → 5 ont's paid fine

~~Keith, Frances~~ — ~~25 W., 110 St.~~ — Sent. 5 da
~~B-2264,5 (City)~~ — New York, N.Y. — 6/19

§X ~~Kerr, Eva (ER)~~ — 129 Suffalk St. — Sent. 5 da
B-2250,1 (City) — New York, N.Y. — 6/19

~~Kevin,Elliot~~ — ~~80 Thompson~~ — ~~6/25~~
1264 (NYS)

§ ~~Kinsler, Michael~~ — ~~740 Noble Ave.~~ — Sent. 3 da WH
B-2326,7 (City) — Bronx, N.Y. — 6/19

~~King, Everett~~ — ~~st. Louis~~ — ~~FO1-5028~~ not answered

King, Ernest — 75-57 263 St. — 5/28
Glen Oaks, N.Y.

§ Komatsu, Kit — 137 E., 12 St. — ~~6/15~~ 6/15 dis
~~B-2334,5~~ (City) 2334,5
Typo →

~~Lawson, Carol~~ — ~~Box 5952~~ — ~~634CH4-8200~~ — ~~6/25~~
1270 (NYS) — U. of Rochester

[	~~Leicerter, Eliz.~~ 1183 (City)	119 Waverly Pl. New York, N.Y.	GR5-1372	~~6/23~~ 5-6/25
§	Lippert, Marla B-2053,52 2252,3	48-36 190 St. Flushing, N.Y.		~~6/23~~ 8-31
//	Levy, Builder A. 1132-36 (Subway)	239 Bay 22 St. Brooklyn, N.Y.	~~606-0259~~ MA2-0109	~~5/27 P-3~~ ~~6/17~~ 7-15
	~~Lerner, Elinor~~ 1271,84 (NYS)			~~6/25~~
[	Little, Wm. 1175,76,77 (US)	89-50 146 St.		~~6/26~~ 8-25 2-B
[	Lloyd Robert 1199 (US)	435 Riv. Dr. Chi (?) 34-25 W.Monroe Chi	NE8-5178	~~6/19~~ 7-9 2-Bt
	Ludwig, Gilbert B-2258,8 (US)	Box 706 142 Ford Hall Rutgers, New Brunswick, N.J.	CH7-1766 X6247	~~6/25~~ 8-25 2-B
[	Lymis, Carlyn 1146, 37 (US)	204-09 45 Rd.		~~6/26~~ 8-25 2-B
	~~Madison, Wm.~~ (Roos. + wife) ~~B-2236~~	115-47 196 St. St. Albans		DISMISSED 6/18
[	Mapp, Thos. 1198,1207 (US)	164-32 109 Rd.		~~6/19~~ 7-9/2-Bt
	Mappori	154-32 109 Rd. (?) Jamaica, N.Y.		call
	Markman, Barry 1202,03.04 (Subway)	25-28 Cruger St. Bronx, N.Y.		6/29

	~~Kubin, Martin~~ 1194,1187 (US)	~~35-05, 90 St.~~ Jackson Hts.		~~6/19~~ 7-9
[	Mervin, Randy 1253 (NYS)	24 Narcissus Dr. Scorett		~~6/24~~ 7-27
	Miller, Wm. 1158,63, (US)	219 Bevier Rd. Rutgers New Brunswick	CH6-0989	~~6/26~~ 8-25
	Murphy, Maureen 2241,3 (US)	120 E., 4 St.		~~6/23~~ 8-25
	~~McLaughlin, Andrew~~ 1265 (NYS)	~~26 Mineola St.~~	~~BE5-6345~~	~~6/25~~ 8-5
	~~MORA, Dennis~~			~~6/25~~ 8-5
[	Nives, Robert 1363 (F)	~~377 Bengas St.~~ BERGEN ST Brooklyn		5/9-66 ~~6/25~~ 6/26?
[	~~Opatshu, Dan~~ 1360 (F)	~~190 River. Dr.~~ NYC		~~6/23~~ 8-25
	~~Oliver, Jim~~	~~342 W., 71 St.~~	~~TR3-5999~~	not arrested
X[	Padwee, Michael 1154, 59 (US)	19 Union St. New Brunswick, NJ	CH7-1766	~~6/26~~ 8-25 ~~EX~~
§	~~Palmer, Christine~~ 2312, 3 (City)	Private Atty.		~~Sent.~~ 6/19
	~~Pam, Robert~~ 1348	~~714 Livingston H.~~	MO3-6600	~~6/19~~ deen
§	Patterson, Susan 2286,7 (US)	134 W., ;5 St. NYC		~~6/23~~ 8-25
§	Pauly, Joan 2285,88 (US)	1264 Amsterdam Av. NYC		~~6/23~~ 8-25

	Peck, James 1213,19 (City)	552 Riverside Dr. NYC		Sent. 6/30
[	Perdu, Lane 1311,27,43 (F)	Nat.'l CORE		~~6/22~~
	Peters, Steven 1188,92 (US)	141-19 71 Rd. Flushing, N.Y.		~~6/19~~
	~~Phillips, Modestine~~	~~St. Louis~~	~~EV5-3957~~	
X§	~~Pierce, Judith B-2260,61 m(City)~~	~~970 E., 224 St.~~ NYC		~~Sent.~~ 6/19
[	Plummer, Lucille 1310 (F)	177 Palma St. St. Augustine Florida	FL4-3690	Bail Rev. ~~6/22~~
	Pearson, Eliz. 1372 (F)	19 E., 88 St. Will not plead - Private Atty.		~~Sent.~~ ~~6/25~~
§	Reer, Karl V. 2292,94 (US)	868 Lincoln Pl. Teaneck,NJ		~~6/23~~
X§	~~Reyes, Helen B2295,6 (City)~~	~~229 E., 4 St.~~ NYC		Sent. 6/19
	~~Riddich, Karne~~ 1280,90	~~Rickville~~		6/25
[	Roberson, Frank 1301,17.33 (F)	717 Gwen Avw. Talahassee, Fla.		~~6/22~~
[	Roberts, Edna 1303,19,1335 (F)	511 M St. Washington, DC		~~6/22~~
[	Rodneko, Igal 1364 (F) (S?)			~~6/23~~

	Rose, Janet 2278	3925 17 Pl. NE Washington DC		Def. Bail BW 6/17
	Rose, Joshua 1356,1418,1432	33-04 91 St. Jackson Hts.		5/15 Term.Fam.Ct.
[	Richard, Ilene 1272 (F)	34-19 Irwin St.		6/25
	Rosinsky, Joel (US)	208-22 Bardwell Av. Queens		
	Roti, Vincent 2225	14-46 142 St. Whitestone		
[	Rubin, Martin 1187 (US)q	33-05 90 St. Jamaica		6/19
	Rushing, Byron 1268 (NYS)	706 Almond St.	476-0770	6/25
	Rushing, Lawrencw 1268,81 (NYS)	17018 118 Avw.		6/25
§	Rustin, Bayard 2298 (City)	340 W., 28 St. NYC War Registers League		Sent. 6/19
§	Schmidt, Thos. 2320,1 (City)	507 W., 113 St. NYC	MO6-2146 UN5-4000 EX.3195	Sent. 6/19
	Schultzer, Martin B2212			
§	Schwanschild, Henry B2299 (City)	War Registers League		Sent. 6/19

	Scott, Earl (Father died - Funeral 6/17) B-2424 (S)			6/17
	Shafter, Ann 1357	39-15 45 St. LIC		Term. Fam. Ct.
[	Sherman, Eugene 1254 (NYS)	62 Park Terr.W.	LO9-1972	~~6/24~~ 7-27 2 B
[	Sklar, Eugene 1309,25,41 (F)	103 Hammill Pl.		~~6/22~~ 8-11 1 B
	Starzynski, Susan 1273 (NYS)	701 Irving Syracuse	475-9702	~~6/23~~ ~~BFBW~~ 6-17 In Europe
	Stevens 1295 (?) this is R. Gordon's docket #			
	Stephens, Pricila 1312 (F)	14620 Filmore St. Miami, Fla.	CE8-1965	6/22 8/4 BW stay exec. till 6/16
	~~Streator, Geo~~	~~70 LaSalle St.~~ ~~NYC~~ ~~checked to remind a girl named Jane mark them~~	~~TR9-3100~~	not arrested - I'll call on back
	~~Sutliff, Ralph~~ ~~2239 (US)~~	~~840 Gr.Concourse~~ Bronx		~~6/19~~ Pbg
§	Taylor, Frances.(SJ) 2269,72 (US)	106-56 160 St.		~~6/23~~ 8-25 1 B
§	Taylor, Sandra (SJ) 2268,71 (US)	106-52 160 St.		~~6/23~~ 8-25 1 B
§	~~Thompson, John~~ ~~B2344,5 (NYS)~~	~~Knapp Hill Rd.~~ ~~Castle Creek, NY~~		Sent. 6/19

Trestman, Irene — 473 West End Av. — 6/25
1274, 87 (NYS)

Tristan, Israel — 937 Greecian Pt.Rd. — Ter,/
1428 — Mapanac, NY — Fam. Ct.

[X Tournour, Eugene — 5780 W.Minister — PA7-5641 DISCONNECTED — 6/24
1262 (NYS) — St. Louis

Wagner, Norma — 253 Rosedale St. — 6/25
1275 (City) — Rochester,NY — AR3-9431

Walker, Margaret — [redacted] — 6/17 yd fine
1374 (F)

[redacted]

[redacted]

Wallerstein, Steve — 397 Thornton St. — 6/19
1350 (S) — So.Orange,NJ — SO3-0783 — dism

Walker, Pat (Miss) — 6/17 yd
B-2408 (S)

Weinerman, Diane — 205 W.End Av. — TR4-0378 — 6/19
dism

§ Weinstock, Rosalind — 119-14 Union Turnpike — 6/23 → 7/8-31
2270,73 (US) — Severed & granted cont,

Weinstein, Judy — 587 Riv.Dr. — AU3-4488
NYC

Weinstone, Laurie — 39-67 47 Ave. — 6/19 P3
1358,1420 — LIC — dism — Term.Fam.Ct.

[redacted]

[Weiss, Joel — 48-50 37 St. LIC — 6/26 — 8-25 2-B.
1152.3 (US)

[West, Frederick — 377 Jefferson St. — ~~6/24~~ 53 — H 2-B 8-14
1140,41 (City) — waive plead & guilt

§ Widman, Donald — 193 2nd Ave. NYC — Default BW — 5 dr 6-19 SS
2246,7 (City) — no tel # here

X§ Wilson, Theodore — ~~1591 Bruckner Blvd.~~ Bronx,NY — MO5-1634 Ex.403 — Sent. 6/19
~~B2330,1~~ (City)

§ Wright, Alberta (SJ?) — 184-22 Keesville Av. Queens — Sent. 6/19
~~2302,07 (City)~~

~~Young, Andy~~ — 116-51 ~~157~~ St. — Plead to 1856 — 6/7
So. Jamaica

Young, Geneva — 5714 Maple St. Louis — BA 1-2030 — 6/7
B-2356 (S)

§ ~~Zagarell, Allen~~ — ~~175 Rivington~~ NYC — ~~OR3-4751~~ — Sent. 6/19
2336,40 (NYS)

Zinn, Sheldon — BFBW dis + ntc to lab
B-2462,2379 (S)

~~Burkin, Joel~~ (Sgt. adv) — 71-61 ~~162 St.~~ Flushing — 6/ FH 6/28
P.3 Burke

Zagarrell, Michael — 1246 Morningside Av. NYC — 6/26
2222.4.3

wd WF case

11 What's commencement? call Jay by Dec 15

ADDENDUM: LIST OF ATTORNEY'S CLIENTS

UL7-1516 HAROLD BRADY, ESQ., attorney for petitioner West;

516-0V1-1673 (OK?) EUGENE BROOKS, ESQ., attorney for petitioners Doctor, Due and Gordon;

WA3-6500 JOHN M. BURNS III, ESQ., attorney for petitioners Roberson, Roberts, Sklar and Stephens;

669-1112 (OK) ELI COHN, ESQ., attorney for petitioners Adkins, Bill Brown and Marshall Brown; 5th Amndt RECORD

TN7-0180 (OK) WILLIAM SCOTT ELLIS, ESQ., attorney for petitioners Plummer, Clark, Cohen and Corbett;

te2-7979 (OK) ARNOLD FEIN, ESQ., attorney for petitioners Rodenko, Rubin and Peters;

LO5-1500 LEONARD FELDMAN, ESQ., attorney for petitioners Jimmie Jones and William Jones;

GL4-4224 (OK) MORTY FRIEDMAN, ESQ., attorney for petitioners Anderson, and Bauman;

te2-9600 (OK) MARVIN KARPATKIN, ESQ., attorney for petitioner Cook;

PL9-6000 JOHN KOSHEL, ESQ., attorney for petitioners Gripper, Hobbs and Jenkins;

HU2-8174 WH3-6500 (OK) Jim daughtry ~~LEONARD~~ MARLOW, ESQ., attorney for petitioners Reer, Frances Taylor and Sandra Taylor;

GEORGE SCHIFFER, ESQ., attorney for petitioners Young, Eisenberg, Harris, Merin, Sherman, Alper, Davis, Peake, Tournour and Jasper;

BE3-7737 (OK) IRWIN WALDMAN, ESQ., attorney for petitioners Perdu and Little

U.S. F C

local clubs
on
10 E 42nd Street
730 5th Av Ellen Lusk
Ed cavanagh Atty. mayor

1851 - Tray 6

Criminal Court of the City of New York

Part 3, County of Queens

STATE OF NEW YORK
COUNTY OF Queens } ss.:

Ptl. Robert Borderick - World's Fair Police

of No. 169 Church Street, County of New York

City of New York, being duly sworn, deposes and says that on April 22, 1964 at about [illegible] P.M., at Schaefer's Exhibit - World's Fair, County of Queens State of New York,

the defendant, 1)Jacqueline Butler; 2)Alice Jacobs; 3)Bonnie Bricker; 4)Gladys Moore; 5)Toni Robinson; 6)Tamara Bezel; 7)[illegible]; 8)[illegible] 9)Cynthia Post; 10)Sylvania Fox; 11)Geneva Young; 12)Georgette Eagan; 13)[illegible] Rodrigues; 14)Becker Moore; 15)Jeffrey Mitchell; 16)Robert Gurvin; 17)Barbara [illegible] 18)Robert Miller; 19)Steven Perlmutter; 20)Helen Snelling; 21)Arthur Cosbey; 22)Mark Tishman; 23)Jonathan Harris; 24)Fred. Winter; 25)John Fisher; 26)[illegible] 27)Kirby McCulloch; 28)Ray Vasquez; 29)Vivian Hutchings; 30)Joyce Lincoln; 31)Dale Yearwood; 32)Steve Durham; Paul Ryden; 34)Sheldon Zinn; 35)Frank Kapp 36)Harvey Oliver; 37)Joseph Lewis; 38)Julius Rubin; 39)Michael Fling; 40)Joseph [illegible]sky; 40)Maynard Waldman; 41)Paul Jasper; 42)Brent Graves; 43)Nadia Farez; 44)[illegible] Jones; 45)James Peake; 46)Hazle Ford; 47)Ivory Perry; 48)Rae ell Martin; 49)Daniel Klein; 50)James Statman; 51)Robert Jaffe; 52)Gerald Tenny; 53)Tom Mabe 54)[illegible]kin; 55)Allen Selgenick; 56)Jeffrey Selzer; 57)Michael Barton; 58)[illegible] 59)Dan. Cherne[illegible]sky; 60)Jerry Cohen; 61)Maurice Peterman; 62)Pat Walker; 63)[illegible] Bosh; 64)Joan Foster; 65)Florence Miller; 66)Judith Jarvis; 67)Helen Seligson 68)[illegible]. Adler; 69)Monique Rasco; 70)Barbara Westerfield; 71)Diane Harris; 72)Joan [illegible]; 73)Winifred Farrar; 74)Rona Weinman; 75)Marjorie Mofert; 76)[illegible] 77)[illegible]n Jacobs; 78)Earl Scott; 79)Victor Miranda; 80)[illegible]ove Anders; 81)Jay Burrish 82)[illegible]l George; 83)Paul Weingold (adults now here) - Being in concert with and [illegible]d with the Adolescents, whose names follow

violated Sec. 1811 of the Penal Law in that they unlawfully interfered with a peace officer in the performance of his duties; as appears from the following:

At the aforementioned time and place, after having been placed under arrest on another charge, the defendants placed themselves on the floor of the Exhibit, and refused to proceed to the patrol wagon and had to be carried bodily from the premises to the patrol wagons.

[illegible]Weinerman; 85)Frederica Genadi; 86)Helen [illegible]bert; 87)Barbara Pope; 88)[illegible] 89)Steve Wallerstein; 90)Bruce Glassburn; 91)Harold Tolkoff; 92)[illegible] Pollock; 93)Carl Norton; 94)Jasmine [illegible]; 95)Ben Sheffield; 96)Lawrence [illegible]

Adults and adolescents being separately charged

WHEREFORE, deponent prays that the defendants be dealt with according to the law provided.

Robert Borderick

Sworn to before me,
April 22, 1964

[illegible]
Judge of the Criminal Court of the City of New York

[illegible]nding Leaves
[illegible]R & P 14(25.0) Vacation Other Leaves

DisCon - May 65

AFFIDAVIT—CLERK'S
SUMMARY OFFENSE

City Magistrates' Court of the City of New York

16 Court, Borough of Queens

CITY OF NEW YORK,
COUNTY OF Queens } ss.:

corrob. affidavits by assisting officers

Ptl. Robert Broderick - World's Fair Police

of No. 100 Church Street, County of New York

City of New York, being duly sworn, says, that on April 22, 1964, 19__, at about __ M.

at Schaefer's Exhibit - World's Fair

in the County of Queens City and State of New York,

the defendant s 1)Jacqueline Butler; 2)Alice Jacobs; 3)Gladys Moore; 4)[illegible] Bolden; 5)Tamara Reneé; 6)Dolores Quintyne; 7)Sheila Jaspal; 8)Cynthia Post; 9)[illegible]; 10)Geneva Young; 11)Georgette Kagan; 12)Ruth Rodrigues; 13)Booker Moore; 14)Jeffrey Mitchell; 15)Robert Curvin; 16)Herbert Hardy; 17)Robert Miller; 18)Steven Perlmutt; 19)John Stelling; 20)Arthur Centerreicher; 21)Mark Fishman; 22)Jonathan Edwards; 23)Fred. Winter; 24)John Fisher; 25)Peter Max; 26)Mike Mitchell; 27)Ray Vanderbeck; 28)Vivian Hutchings; 29)Joyce Insela; 30)Geraldo Tenerowd; 31)Steve Burton; 32)Paul Hyden; 33)Sheldon Zinn; 34)Frank Rapada; 35)Harvey Oliver; 36)Joseph Lento; 37)Julius Rabin; 38)Michael King; 39)Joseph Pinnarevelos; 40)Maynard Waldman; 41)Paul Jasper; 42)Brent Greves; 43)Louis Peron; 44)Taylor Jones; 45)Lenny Poole; 46)Louis Ford; 47)Ivory Perry; 48)Randall Norton; 49)Michael Klein; 50)James Seats; 51)Robert Jaffe; 52)Gerald Tenney; 53)Tom Meiner; 54)Ms. Abraham; 55)Allen Geiger; 56)Jeffrey Galper; 57)Michael Martes; 58)Mr. Burke; 59)Ben Sherman; 60)Barry Cohen; 61)Harriet Puterman; 62)Pat Walker; 63)Arlene Rank; 64)Joan Tanner; 65)Mr. Miller; 66)Judith Jasmin; 67)Helen Geiger; 68)Mrs. Adler; 69)Monique Hester; 70)Barbara Westerfield; 71)Jane Harris; 72)Joan O'Gorman; 73)Winifred Farrar; 74)Dena Weisman; 75)Marjorie Kiefert; 76)Loretta Hall (Adults now here) acting in concert with each other and with the named adolescents enumerated below - adults and adolescents being separately arraigned, also Jane Harris, Joan O'Gorman, Winifred [illegible] Farrar, Dena Weisman, Martin Jacobs, Earl Scott, Victor Miranda Steve Amber, Jay Dravich, George Manuel and Paul Feingold

committed the offense of Disorderly Conduct in violation of Sec. 722 sub 2 of the Penal Law in that with intent to provoke a breach of the peace [illegible] circumstances whereby a breach of the peace might be occasioned, [illegible] State Police about which the [illegible] and at the bar of [illegible] exhibit; yelled, shouted, [illegible] and refused; several times [illegible] refused to leave despite repeated orders to do so; [illegible] at the bar, causing many to leave; by their actions were an [illegible] to patrons and employees of the Exhibit.

75)Dana Weinstein; 76)Frederica Cassidy; 77)Helen Gilbert; 78)Barbara Bell; 79)Dorothy Falkhurst; 80)[illegible]; 81)Peggy Terrell; 82)Danny Pollack; 83)Neal Merrill; 84)[illegible]; 85)Lewis Weinstein;

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
4th day of May 19 69

Robert John Broderick

City Magistrate

Dis Con - May 6

AFFIDAVIT—CLERK'S
SUMMARY OFFENSE

City Magistrates' Court of the City of New York

16 Court, Borough of Queens

CITY OF NEW YORK,
COUNTY OF Queens } ss.:

corrob. affidavits by assisting officers

Ptl. Robert Frederick - World's Fair Police

of No. 100 Church Street, County of New York

City of New York, being duly sworn, says, that on April 22, 1964, 19—, at about — M.

at Schaefer's Exhibit - World's Fair

in the County of Queens City and State of New York,

the defendant s 1)Jacqualine Butler; 2)Alice Jacobs; 3)Gladys Meeres; 4)[illegible] Bobiar
)Tamara Bonel; 6)Dolores Quintyne; 7)Sheila Jampel; 8)Cynthia Post; 9)[illegible]
9)Geneva Young; 11)Georgette Kagan; 12)Ruth Rodrigues; 13)Booker Moore; 14)Jeffr
itchell; 15)Robert Curvin; 16)Herbert Hardy; 17)Robert Miller; 18)Steven Perlmut
7)John Stalling; 18)Arthur Oesterreicher; 19)Mark Fishman; 20)Jonathon Rabwin;
1)Fred. Winter; 22)John Fisher; 23)Peter Max; 24)[illegible]; 25)Ely Villegas;
5)Vivian Hutchings; 27)Joyce Insala; 28)Carlisle Townsend; 29)Steve Hanley; 30)
aul Hyden; 31)Sheldon Zinn; 32)Frank Rapada; 33)Harvey Silver; 34)Joseph Lewis;
5)Julius Rabin; 36)Michael King; 37)Joseph Pissarevsky; 38)Maynard Middleton; 39)
aul Jasper; 40)Brent Groves; 41)Louis Perez; 42)Taylor James; 43)[illegible];
)Louis Ford; 45)Ivory Perry; 46)Randall Marsden; 47)Michael Klein; 48)[illegible]
9)Robert Jaffe; 50)Gerald Tenney; 51)Tom Bigbee; 52)Wm. Abraham; 53)Miles Geiger
)Jeffrey Galper; 55)Michael Hartes; 56)[illegible]; 57)Ben Shermansky; 58)[illegible]
ohan; 59)Harriet Puterman; 60)Pat Walker; 61)Arlene Rank; 62)[illegible]; 63)[illegible]
iller; 64)Judith Jasmin; 65)Helen Geiger; 66)Mrs. Adler; 67)[illegible]; 68)
arbara Westerfield; 69)Jane Harris; 70)Joan O'Gorman; 71)Winifred Farrar; 72)Dena
eisman; 73)Marjorie Kiefert; 74)Loretta Hall (address now here) acting in concer
ith each other and with the named adolescents committed below - [illegible]
[illegible] being seperately arraigned, also Jane Harris, Joan O'Gorman, Winifred
[illegible], Farrar, Dena Weisman, Martin Jacobs, Earl Scott, Victor Miranda
F., Steve Amber, Jay Dravich, George Mannel and Paul Feingold

committed the offense of Disorderly Conduct in violation of Sec. 722 sub 2
of the Penal Law in that with intent to provoke a breach of the peace he made
[illegible] threatening, [illegible] which of the peace might be occasioned, [illegible]
into action about [illegible] the [illegible] and on the bar of [illegible]
exhibit, yelled, shouted, [illegible] and refused; refused [illegible]
refused to leave despite repeated orders to do so; [illegible] persons
at the bar, causing many to leave; by their actions were an [illegible] to
patrons and employees of the Exhibit.

75)Dana Weisman; 76)Frederica Canada; 77)Helen Gilbert; 78)Robert Bell; 79)
Dorothy Pitchford; 80)[illegible]; 81)[illegible]; 82)[illegible]; 83)
Peggy Terrell; 84)Danny Pollock; 85)[illegible]; 86)[illegible]
Laurie Weinstein;

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me, 4th day of May 1964

J. Dolphin

City Magistrate

Robert John Frederick

trial date: 6/1/'64

Adjourned to 5/11/64 Bail $ Paroled

at Part , County of

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Adjourned to 6-1-64 Bail $ P.C. to

Speak Mayor re Parole Prosecution Felon

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Week End/Night Part Docket

Docket

Complaint prepared by

Witnesses (name and address)

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part 2 B County of Kings

THE PEOPLE OF THE STATE OF NEW YORK

1 Jacqueline Butler F 19
5078 Wells St St Louis
2 Alice Jacobs F 22 Missouri
2171 Central Road Ft Lee NJ
3 Bonnie Brisker F 21
1425 Laural St St Louis Miss
4 Gladys Moore F 19
1551 Carr Dr St Ious Miss
5 Toni Robinson F 22
2170 University Avenue Lx

April 22 64

Ptl Broderick WFPL

2036 PL

6 Jemera Ponel F 20 3061 Bway NYC
7 Dolores Quintyne F 30 [illegible] Bayview Avenue [illegible]
8 Shelia Jampel F 19, 708 E 21 St Bklyn
9 Cynthia Post F 21 69 Mc Dougal St NYC
10 Sylvania Roa F 19 3 C1 Bway NYC
11 Geneva Young F 19 5714 Maple Ave St Louis Missouri
12 Georgette Hagan F 19 617 w 113 St NYC
13 Ruth Rodriquez F 19 1047 Faile St Bx NY
14 Booker Moore M 25 4030 St Ferdinand St St Louis Missour
15 Jeffery Mitchell M 21 604 W 115th St NYC
16 Robert Curvin M 30 106 Huntington Terr Newark NJ
17 Herbert Hardy M 27 4418 Enright Ave St Louis Miss.
18 Robert Miller M 19 220 w 104th St NYC
19 Steven Permutter M 19 1436 Clay Avenue Bx
20 John Stelling M 27 4043 Fairfax St Louis Mo
21 Arthur Westerreicher M 42 1075 Hachia Avenue Teneck NJ
22 Mark Fishman M 22 316 w 19th St NYC
23 Jonathan Harris M 28 101 Avenue B NYC
24 Frederick Winter M 19 243 Hanby Rd Bklyn
25 John Fisher M 21 3347 LIC ND
26 Peter Dix M 20 525 w 113th St NYC
27 Eliz Mitchell 604 w 115St NYC
28 May Vanderes F 36 c/o Miller 38 Cross NYC
29 Vivian Revece Hutchings F 22 214 Orange St Newark NJ
30 Joyce Insolia F 36 27 Moret Pl Greenlawn LI
31 Carisle N Yearwood M 32 523 w 149 St NYC
32 Steve Durham M 20 Orlene Va
33 Paul Nyden M 19 708 Newh 11 Columbia College
34 Sheldon Zinn M 32 1371 Lincen Blvd Bklyn
35 Frank Espada M 33 245 Wortman Ave Bklyn
36 Harvey Oliver M 19 478 Bellmont Ave Newark NJ
37 Joseph Louis M 21 129 Sulfolk St NYC
38 Julius Babin M 40 14 Bedford St Bklyn
39 Michael Flug M 19 [illegible] w 105th St NYC
40 Joseph Pissarevsky M 20 555 Nethe-lane Ave NYC
41 Maynard Maidman M 19 110 Burnside St NYC

trial date 6/1/64

Week End/Night Part
Docket

Adjourned to Bail $

at Part , County of

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge

SENTENCE

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part , County of

THE People of the State

42 Paul Jasper M 19
65 w 106st NYC
43 Brent Groves M 70
2305 west 25th St NYC
44 Luis Perez M 21 237 w. 105th St
45 Taylor James M 21
2704 Illonis Avest, St. Louis Mo.
46 James Peak M 22
342a L BB'way 55t Louis, Mo.
47 Louis Ford M 24 B
4466 Kensington St St Louis MO
48 Ivory Perry 511 Raymond St St Louis Missouri
49 Russell Martin M 25 B
192 2nd Ave westbury L. I.

50 Michael Klein M 24
259 Clinton Place Newark N.J.
51 James Statman M 20 37-06 89th St Queens
52 Robert Jaffe M 20 98-30 67th Ave Queens
53 Gerald Tenney M 22 2776 Jerome Ave Bx
54 Tom Bieber M 19 607 Furnald Ave Conn
55 William Abrashkin M 25 20 w 104th St NYC
56 Allen Solganick M 27 4303 Bowaltr Brs
57 Jeffery Galper M 29 311 w 107th St NYC
58 Michael Bartos M 21 315 E 65th St NYC
59 William Forbs M 232 E 6th St NY
60 Daniel Chernofsky 333 Covington Dr Brklyn
Jerry Cohen M 22 600 w 113th St NYC
62 Harriet Puterman F 21 348 E 18th St NYC
63 Pat Walker F 21 38 Park Row NYC
64 Arlene Koch F 19 33 Watkins Ave Woodbury NJ
65 Joan Foster F 32 984 Findlay Avenue Bronx
66 Florence Miller 3784 10th Ave NYC
67 Judith Jasmin F 26 3600 Ridgewood Montreal Canada
68 Helen Geiger F 23 182 E 2nd Avenue, NYC
69 Elizabeth Adler F 24 250 E 105th St. NYC
70 Monique Bascoe F 30 4105 Cote Lesneiges Montreal Canada
71 Barbara Westerfield F 21 207
72 Jane Harris F 25 101 Ave E NYC
Jane O'Gorman F 21 173 Jane St Englewood NJ
74 Winifred Farrar F 21 130 Fairview Avenue Cedarhurst
75 Dena Weisman F 21 59-15 47th Avenue, Queens
Marjorie Ziefert F 21 314 64 55rd Avenue Fairside NY
Chlorette Hall F 25 1535 Biddle St Missouri

trial date 6/4/64

Week End/Night Part

Docket

CRIMINAL COURT

OF THE CITY OF NEW YORK

Part

Counsel

Defendant

Date

Adjourned to

Part

If paroled, the defendant was advised of section 1694b of the Penal Law

Date

Adjourned to

Part

If paroled, the defendant was advised of section 1694b of the Penal Law

Date

World's Fair

William H. Abrashkin
Columbia College
New York 27, New York

MAY 28 RECD

May 26, 1964

Dear Mr. Rachlin:

I'm sorry it took us so long to get you this list. We had considerable trouble getting the addresses of some of the people.

This is the most complete list we were able to compile. I hope we have all of the names, but there is a chance that somebody has been missed.

Not all of the people are Columbia students, but all are members of Columbia CORE.

I am constantly being asked what the possibilities are for June first. Is there any information people should have? If a fairly large number of demonstrators come before the judge at the same time, wouldn't the probable inability of the officers to identify the people they arrested be in our favor? When I was booked at the fair, for instance, one officer claimed he had arrested me at the New York demonstration, when I was really arrested at Shaefer.

Yours truly,
William Abrashkin
William Abrashkin

CONGRESS OF RACIAL Equality
Columbia University Chapter

Wm. ABRASHKIN
Robt. Miller
220 W. 104th St. #10
N.Y.C. UN5-1718

WORLD'S FAIR (27 Names)

May 14, 1964

NAME	DATE
Abel, Katy	5/15/64
[redacted] Abrashkin, Wm. 220 W. 104th St. #10 UN 5 1718	
Adkins, Albert	5/25/64
[redacted] Adler, Elizabeth 84 E. 111th St. (Project House) FIf 3549	
Alexander, Sue	5/25/64
Alper, Donald	
[redacted] Amdur, Steve 855 West End Avenue UN4-2653	
Anderson, Franklin	
Asgersson, Eula	
Banks, Gilbert	
Bardin, Hillel	5/18/64
Barron, Jerry	
Barton, Michael	
Bascoe, Monique	
Baumann, Hully	5/21/64
Beachelor, Wm.	
Bell, Verla	5/18/64
[redacted] Berber, Thos. 607 FURNALD HALL, COLUMBIA UNIVERSITY MO 6 5000 Ext. 607	
Berman, Andrew	

4

Boch, Arlene

Bohonan, Farmanica

Boodin, Kolgal 5/15/64

Boockcheim, Murry 5/15/64

Bonner, Rebecca 6/12/64

Brady, Mark

Braddock, Geo

Braverman, Jan 5/15/64

Briscoe, Bonnie

[redacted] Brogan, Patrick
521 FURNALD HALL, COLUMBIA UNIVERSITY
MO 5-5000

Brown, Bill 5/25/64

Brown, Claudia 5/28/64

Brown, Emmelda 5/15/64

Brown, Marshall 5/25/64

Budarin, Geo. 5/15/64

Bulkin, Joel

Butler, Jaqueline'

Canado, Frederick

Chernofsky, Daniel

Chernowitz, Alex 5/25/64

Clark, John	5/18/64
Clark, Jimmie	5/25/64
Clayton, Morris	
[redacted]Cohen, Jerry	
Conway, Dorothy	
Cook, Ronnie	5/27/64
Corbett, Phylliss	5/25/64
Coy, Ronald	5/25/64
Crowner, David	5/22/64
Culvin, Robert	
Dantzler, Thelma	5/26/64
Davis, Loria	5/18/64
Davis. Mars	
Davis, Paul	
Davis, Roy	5/15/64
DiBliase, Benjamin	
Dickson, John	
[redacted]Digilio, Joseph	
[redacted]Di[illegible], Peter	
Dixon, John	

Doctor, Henry 5/25/64

Doe, John

Dravich, Jay

[redacted] Drew, Joseph
Columbia University
1301 B New Hall
MO6-9000

Drew, Joseph 5/18/64

Dubman, David

Dubuman, David

Due, Patricia 5/25/64

Durham, Steve

Einhorn, Carl

Eisenberg, Eric

Epstein, Howard

Espada, Frank

Farber, Tedi

Farmer, James A.

Farrar, Winifred

Farmain, Barbara

Feingold, Paul

Ferguson, Earthline

[redacted] Fielding, Dorothy
220 W. 104th St. #10
KN5 1718

2

2

Fisher, John

Flesch, Walter

[redacted] Flug, Michael
237 W. 105th St.
MO 3 6426

[redacted] Foa, Sylvania
Barnard Residence Halls
UN 5 9000

Forbs, Wm.

Ford, Louis

Foster, Joan

Fruchter, Norman 6/4/64

Gabnielsky, Robert 5/15/64

[redacted] Galper, Jeffry
C/O Galper, Stephen UN 5 2688
311 W. 107 St. NYC

[redacted] Geiger, Helen
Barnard Residence Halls
UN 5 9000

Gethers, Joan

[redacted] Gilbert, Nelson
807B New Hall, Columbia University
MO 6 7000

Gilford, Lisa

Gilmanter, Allan

Glover, Gular

Glushakan, Bruce

Gordon, Pamela 5/25/64

Gould, Paul

Green, Ed. Smith

5

Green, Ernest	5/28/64
Greenberg, Michael	
Gripper, Vernall	5/25/64
Gripper, Vernall	
Groves, Brent	
Gruzen, Marjorie	
Gutman, M.	
Hahbohm, Wm.	5/18/64
Hall, Loreta	
Holper, James	
Hardy, Herbert	
Harrington, Donald	5/18/64
Harrington, Edw. M.	5/18/64
Harris, Clayton	
Harris, Jane	
Harris, Jonathan	
Harris, Mary	5/20/64
Harris, Robert	
Heifetz, Henry	5/25/64
Hewitt, Sarah	5/26/64

Hist, Owen

Hookes. Lourras 5/25/64

Horo witz, Rachelle 5/28/64

Hurwitz, Thos.

Hutchings, Vician

Insolia, Joyce

Jackson, Blyden 5/22/64

[redacted] Jacobs, Alice

Jacobs, Martin

Jaffe, Robert

[redacted] Jampel, Sheila
768 E. 21st St. B'klyn DE 4 2424

Jasmin, Judith

[redacted] Jasper, Paul
65 W. 106th St. N.Y.C.
UN 6 2289

Jenkins, Loren 5/25/64

Johnson, Marjorie

Jones, Jimmie 5/22/64

Jones, Taylor

Jones, Wm. 5/22/64

Kagan, Georgete

Kahn, Thos.

Kalimigis, Guss.

Kehol, Katherine

2

3

Kalenbgert or Kalenbert, Gus	
Kalin, Thos.	5/18/64
Kalintgis, Gus.	
Katz, Jeffrey	
Keary, Ershine	5/15/64
Keith, Frances	
Keir, Eva	5/15/64
Keven, Eliot	
Kinsler, Michael	
Klein, Michael	
Komatsu, Kit	
Larsen, Robert	5/22/64
Lawson, Carol	
Leicester, Elizabeth	
Lippert, Marla	6/12/64
Little, Wm.	
Lloyd, Robert	
Louis, Joseph	
Ludwig, G.	5/21/64

Lymis, Carlyn 5/21/64

Madison, Wm/

[redacted] Maidman, Maynard
110 FURNALD HALL, COLUMBIA UNIVERSITY
MO 6 5000
Manuel, George

Mapp, Thos/

Margolies, Michael

Markman, Barry 5/25/64

Marshard, Jacques 5/22/64

Martin, Rubin

Martin, Russell

Martinez, Nicassio 5/28/64

Meyers, Robin 5/22/64

Miller, Florence

[redacted] Miller, Robert
220 W. 104 St.
UN 5 1718
Miller, Wm. 5/22/64

[redacted] Miranda, Victor, Jr.
c/o American Friends Service Committee
Project House, 94 E. 111th St. FI 8 3549
[redacted] Mitchell, Elizabeth
604 W. 115th St
(No Phone)
[redacted] Mitchell, Jeffrey
604 W. 115th St.
(No Phone)
Moore, Booker

Moore, Gladys

5

5

Murphy, Maurreen 5/20/64

Myers, Robin 5/22/64

McCormick, Bob

McLaughlin, Andrew

Napper, Marjorie

Nevin, Randy

Nieogs, Robert 5/15/64

Norton, Carl

[redacted] Nyden, Paul
708 New Hall, Columbia University
MO6 9000
Oesterreichter, Arthur

O'Gorman, Joan

Oliver, Harvey

Pain, Robert

Padow, Robert

Paduce, Michael 5/22/64

Paduce, Michael

Palmer, Christine 5/21/64

[redacted] (?) or Pam, Robert
714 Livingston Hall, Columbia University
MO36600
Parlin, Jeanne Lee 5/21/64

Patterson, Susan 5/20/64

2

2

Pauly, Joan 5/20/64

Peck, James 5/18/64

Peake, James Jr.

Penny, Gerald

Perdu. Lane 5/25/64

[redacted] Perez, Louis
237 W. 105th St.
MO3 6426

Permutter, Steve

Perry, Ivory

Peters, Steven

Pierce, Judith

Pissarevsky, Joseph

Plumnes, Lucille 5/25/64

Pollock, Danny

Post, Cynthia

Pwsner, Bruce

Putterman, Harriet

Quintyne, Delores

Rabin, Julius

Reer, Karl V.

Reyes, Helen

Rice, Kenneth

Roberson, Frank 5/25/64

Roberts, Eda 5/25/64

Robert, Jaffe

Robert, Lloyd

Robinson, Louis

Robinson, Toni

Rodriguez, Ruth

[redacted], Jemera
BARNARD RESIDENCE HALLS
UN 59000
Rose, Janet

Rose, Joshua 5/15/64

Roti, Vincent

Rubin, Martin

Rushing, Byron

Rushing, Lawrence

Rustin, Bayard

[redacted] Schapiro, Robert
419 Furnald Hall, Columbia
MO6 5000
[redacted] Schmidt, Thos. 6/8/64
507 W. 113th St., N.Y.C.
MO6 2146
Schultzer, Martin

Schwanschild, Henry

Scott, Earl

Shaftel, Ann	
Sharrow, Elouise L.	
Shatkin, Norman	5/15/64
Sherman, Eugene	
Shitkin, Joan	5/15/64
Siegal, Larry	5/15/64
Sklar, Eugene	5/25/64
Slutsky, Martin	
Solganick, Allen	
Starzznski, Susan	
Statman, James	
Stein, Robert V.	
Stelling, John	
Sterling, John	
Stevens, Patricia	5/25/64
Straus, Arthur	
Sutlife, Jack	
Taylor, Frances	5/15/64
Taylor, Sandra	5/15/64
Tenney, Gerald	

Terrell, Peggy

Thompson, John

Tishman, Mark

Trestman, Irene

Tristan, Israel

Tournant, Eugene

[redacted] Vandeurs, Kay
c/o American Friends Service Com. Project House
94 E. 111th St. FI 83549 5/15/64
Walker, Margaret

Wallerstein, Steve

Walker, Pat

Weinerman , Diane 5/15/64

Weinstock, Rosaling

Weinstone, Laurie

Weisman, Dena 5/22/64

Weiss, Joel

West, Frederick

Westerfield, Barbara 5/15/64

Widman, Donald 5/21/64

Wilson, Theodore

Wintor, Frederick

Wright, Alberta 5/28/64

Yearwood, Carlisle

Young, Geneva

Zagarell, Allen

Ziefert, Marjorie

Zinn, Sheldon

D'S NAME Janet Rose AGE 21
ADDRESS 3925 17th Pl NE — Wash DC TEL
PLACE OF INCIDENT at jail (3110 Pct)
TIME/ARREST PINKERTON
POLICEMAN PRECINCT
OTHER PLACES OF DETENTION
CHARGES

TIME BOOKED POLICE TREATMENT

ATTY
ARRAIGNED /TIME JUDGE
BAIL BONDSMAN ADA
OTHER ACTION TAKEN

NEXT COURT DATE REF .TO:

COURT STENO
GENERAL

Student at Howard —
Jr.
Voice —

failing to obey —

722-23 —

Note — a very minor
charge

D'S NAME Sular Glover AGE 30
ADDRESS ~~204 Clarkson~~ 204-12 100th Ave TEL HO4 9367
PLACE OF INCIDENT 24 C Pavillion
TIME/ARREST 1120 PINKERTON ✓
POLICEMAN _____ PRECINCT _____
OTHER PLACES OF DETENTION _____
CHARGES _____

TIME BOOKED _____ POLICE TREATMENT _____

ATTY _____
ARRAIGNED /TIME _____ JUDGE _____
BAIL _____ BONDSMAN _____ ADA _____
OTHER ACTION TAKEN _____

NEXT COURT DATE _____ REF .TO: _____

COURT STENO _____
GENERAL _____

1, Housewife -
2, no record —

Bail

D'S NAME Michael Kinsler AGE 19
ADDRESS 740 Noble Ave Bronx TEL DA 9 05141
PLACE OF INCIDENT NYC Pav
TIME/ARREST 1:15 PINKERTON
POLICEMAN PRECINCT
OTHER PLACES OF DETENTION
CHARGES

TIME BOOKED POLICE TREATMENT

ATTY
ARRAIGNED /TIME JUDGE
BAIL BONDSMAN ADA
OTHER ACTION TAKEN

NEXT COURT DATE REF .TO:

COURT STENO
GENERAL

1. student City College
2. Music Publishers Holding Co - order clerk - Oct 1
3, no conv or arr

5.00 Bl- 1 81-1 00 5/7

Helen G

D'S NAME Reyes AGE 35
ADDRESS 229 E 4th St TEL 0232777
PLACE OF INCIDENT NY Bar
TIME/ARREST 11:30 PINKERTON
POLICEMAN PRECINCT
OTHER PLACES OF DETENTION
CHARGES

TIME BOOKED POLICE TREATMENT

ATTY
ARRAIGNED /TIME JUDGE
BAIL BONDSMAN ADA
OTHER ACTION TAKEN

NEXT COURT DATE REF .TO:

COURT STENO
GENERAL

1. m 3 children
2. work Columbia Univ
   computer programmer
3. no record

1851
PO(2)

5/7

500
Poole

D'S NAME Rosalind Weinstock AGE 19
ADDRESS 119-14 Union Turnp TEL Fl 4375 4
PLACE OF INCIDENT U S pavilion
TIME/ARREST 1100 PINKERTON
POLICEMAN Lowery - PRECINCT
OTHER PLACES OF DETENTION
CHARGES

TIME BOOKED POLICE TREATMENT

ATTY
ARRAIGNED /TIME JUDGE
BAIL BONDSMAN ADA
OTHER ACTION TAKEN

NEXT COURT DATE REF .TO:

COURT STENO
GENERAL

Student - lives w parents
never arrested -

D'S NAME Saundra Taylor AGE 21
ADDRESS 126 56 160 st TEL 0477161
PLACE OF INCIDENT US Pavelion
TIME/ARREST _____ PINKERTON _____
POLICEMAN Lowry PRECINCT _____
OTHER PLACES OF DETENTION _____
CHARGES _____

TIME BOOKED _____ POLICE TREATMENT _____

ATTY _____
ARRAIGNED /TIME _____ JUDGE _____
BAIL _____ BONDSMAN _____ ADA _____
OTHER ACTION TAKEN _____

NEXT COURT DATE _____ REF .TO: _____

COURT STENO _____
GENERAL _____

no work
~~she~~
lives w/mother —

D'S NAME Frances Taylor AGE 19
ADDRESS same TEL same
PLACE OF INCIDENT US Pavillion
TIME/ARREST _____ PINKERTON _____
POLICEMAN _____ PRECINCT _____
OTHER PLACES OF DETENTION _____
CHARGES _____
_____
TIME BOOKED _____ POLICE TREATMENT _____
_____
_____
ATTY _____
ARRAIGNED /TIME _____ JUDGE _____
BAIL _____ BONDSMAN _____ ADA _____
OTHER ACTION TAKEN _____
_____
_____
NEXT COURT DATE _____ REF .TO: _____

COURT STENO _____
GENERAL _____

live w mother
writer —
_____
_____
published —

SEOFICE 1964 WORLD'S FAIR CASES (DEFENDANTS' BONDS)

State Historical Society of Wisconsin

Please Retain Original Order

Martin Rubin 50.00 ✓ 5/4
Joel Weiss 50.00 ✓ 5/22
Michael Padwee 50.00 ✓ 5/22
Gus Kalimiqis 50.00 ✓ 5/4
Thomas Mapp 50.00 ✓ 5/4
Herb Callender 1500.00 ✓ 5/4
Michael Greenberg 50.00 ✓ 4/30

Cash 5
Bail 3
Surety 3

This list should correspond with "Cash" sheets in week

Review bail — tomorrow! Bail out 4/24/64

NO Bond	*Roger	Kahn.	$2500	bond dismissed
NO Bond	Owen	Hirst	500	bond $1000 (paid)
NO Bond	George	Budabin	$500	bond.
NO Bond	John	Dicksm	$500	bond + $50
NO Bond	Robert	Lloyd	$500	bond + $50

~~180.00~~
~~240.00~~ 240.00
~~240.00~~

bal has

bal gave Rachlin 100 for Dicksm + Lloyd
Currier borrowed 10

bal has 180.00

300 710 1500 1950.00
200

Joseph Louis Jackson Schmidt Dix

James Farmer - 550.00 ✓ 5/28
Mike Klug x- 50.00 ✓ ~~4/24~~
David Chemerka x- 50.00 ✓ ~~4/24~~
David Moore x - 50.00 ✓ ?
Sheldon Zinn x- 50.00 ✓ ~~4/24~~
Erskine Keary - 0000 ✓ ~~4/24~~
Bahman Famm - 0000 ✓ ~~4/24~~
Jerry Cohen - 50.00 ✓
Johnathan Harris - 50.00 ✓
Louis Ford - 50.00 ✓
Joffrey Mitchell - 50.00 ✓ 5/6
Harvey Olivier - 50.00 ✓
Howard Epolen - 50.00 ✓ 5/4
John Clark - 30.00 ✓ 5/18
Frank Espada - 50.00 ✓ 5/6
Jim Jones - 50.00 ✓ 5/22
Taylor Jones - 50.00 5/6

Brooklyn
? Owen Hirst → 2500.00

~~3000.00~~

50.00
500.00
500.00
500.00
1500.00

Michael Klein	50.00 ✓	5/6
Robert Jaffe	50.00 ✓	5/6
Michael Bartos	50.00 ✓	5/6
Allan Solganick	50.00 ✓	5/6
William Forbes	50.00 ✓	5/6
Donald Alper	50.00 ✓	5/13
Frederick Winter	50.00 ✓	5/6
John Fisher	50.00 ✓	5/6
Carl Einhorn	50.00 ✓	5/12
Ivory Perry	50.00 ✓	5/6
Paul Gould	50.00 ✓	5/12
John Thompson	50.00 ✓	5/12
Herbert Hardy	50.00 ✓	5/6
William Beachelor	50.00 ✓	5/4
George Manuel	50.00 ✓	5/6
Victor Miranda	50.00 ✓	5/6
Ronald Cox	50.00 ✓	5/25
David Dubman	50.00 ✓	5/7
Arthur Strauss	50.00 ✓	5/7
Patrick Brogan	50.00 ✓	5/7
Hillel Baden	50.00 ✓	5/18

Julius Rabin - 50.00 5/6

Women's House of D - 1000.00

Louis Perez - 50.00 5/6

Maynard Wardman - 50.00 5/6

Steve Durham 50.00 5/6

Robert Miller 50.00 5/6

Ernest Green 0000

Stephen Perlmutter 50.00 5/6

John Sterling 50.00 5/6

Mark Tishman 50.00 5/6

Grover Brant 50.00 5/6

Ernest Smith Green 100.00 5/11

Allen Zagaval 50.00 5/13

Paul Taugold 50.00 5/6

William Halbohm 50.00 5/18

Tom Bieber 50.00 5/6

Peter Dix 0000.00

Peter Dix?

Ernest Green?

Form 11–75M-701524(63) 114

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of ~~Kings~~ Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl James P. Lynch Jr. W FP D being duly sworn, says that at 1:15 PM on April 22, 1964 at NY C Pavilion Building Worlds Fair in the County of Queens, City and State of New York, the defendant Carl Einhorn (now here)

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2&4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant lounge, loiter andsit on the doorway of the NY C Pavilion and dd by their actions block the entrance of the building and interfere with the free passage way into the building and when ~~xxx~~ directed to get up and stop blocking the entrance thereto the defendant did refuse to do so and when placed under arrest and asked to accompany the officer he did refuse to do so and necessary force and ~~xxxxxxxxxxx~~ assistance had to be called to remove the defendant therefrom.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11–75M-701524(63) 114

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 3, County of ~~Kings~~ Queens

STATE OF NEW YORK, }
COUNTY OF Kings } ss.:

Cpl Thomas Cawley Pct 1 WFP D being duly sworn, says that at 1:15 PM on April 22, 1964, at in front of NY C Building Worlds Fair in the County of Queens, City and State of New York, the defendant Michael L Kinsler (now here) acting in concert with others also arrested and arraigned in this court.

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did sit in the doorway of the NY C Building and did sing and carry on and chant and did by ~~xxxx~~ his actions interfere with persons using the free passageway into and out of the building and when asked to desist continued to carry on singing, chanting and sitting in said doorway of the foresaid building.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Donald Baumann World's Fair Police being duly sworn, says that at 1:20PM on April 22, 19 64, at NYCBuilding World's Fair in the County of Queens, City and State of New York, the defendant Robert Larsen

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant was loud and boisterous, lying on the ground, refused to desist and get up when ordered to do so by deponent, causing a crowd to gather blocking the entrance to the building to the annoyance of persons in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

April 22 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)

Vacation

Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl. Bruce Plapinger, Shield 7% Worlds Fair Police being duly sworn, says that at 1 P.M on April 22, 19 64 at NYC Bldg, Worlds Fair in the County of Queens, City and State of New York, the defendant Joan Gethers

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant was loud and boisterous while sitting down in front of the entrance to the building above blocking the entrance thereto. The Defendant was congregated with others and when told on three seperate occasions to move on refused to do so. The Defendant by her actions caused annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

April 22, 19 64

Manuel Gomez *Judge.*

Pending Leaves: (see R & P 14/26.0)

Vacation

Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Jose Alequen World's Fair Pol being duly sworn, says that at 1:20 PM on April 22, 1964, at NYC Building World's Fair in the County of Queens, City and State of New York, the defendant Blyden Jackson

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant lying down, refused to get up when ordered to do so by deponent, causing a crowd to gather blocking the building to persons entering and leaving to the annoyance of persons in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl. Raymond Cooke, Badge 583, Worlds Fair Police being duly sworn, says that at 12Noon on April 22, 1964, at NYCity Bldg, Worlds Fair in the County of Queens, City and State of New York, the defendant Christine Palmer

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant at the above time and place the defendant while congregated with others sat down in the entrance and when told by the deponent on three seperate occasions to move on refused to do so. The Defendant by her actions caused annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964

Manuel Cossa Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1b, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl John Ferguson 17th Div. being duly sworn, says

that at 10:35 AM on April 22nd, 1964, at 94-43 43rd Avenue in front 110 Pct.

in the County of Queens, City and State of New York,

the defendant Walter Flesch

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant Did at the above time and place sit upon the steps of the stationhouse obstructing the doorway and did use loud and boisterous language did refuse to desist and move on when ordered to doso by the deponent and did annoy those persons leaving and entering the stationhouse and did cause a crowd to collect and annoyance to persons in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
4/22/64
....., 19.....

.....
Judge.

.....

Pending Leaves: (see R & P 14/26.0)

Vacation .....

Other Leave: .....

.....

36—30M-1211029(62) 447 AFFIDAVIT—GENERAL SUMMARY OFFENSE

Criminal Court of the City of New York

Part 1B, County of Queens

CITY OF NEW YORK }
COUNTY OF Queens } ss.:

Ptl. Donald Hansen Shield 445

of No. Transit Police, County of .....,

City of New York, being duly sworn, says that on April 22, 19 64, at about 9:40AM M.

at Queensboro Plaza I.R.T.

in the County of Queens City and State of New York,

the defendant Martin Schultzer

Without authorization enter the exit gate at the above station.

Without paying the prescribed fare by law.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me
April 22,1964
....., 19.....

.....
Lieutenant-Sergeant

.....
Complainant *Squad*

.....
Judge

Pending Leaves: (see R & P 14/26.0)

Vacation .....

Other Leave: .....

.....

36—30M-709794(62) 447

AFFIDAVIT—GENERAL
SUMMARY OFFENSE

Criminal Court of the City of New York

Part 1B, County of Queens

CITY OF NEW YORK
COUNTY OF Queens } ss.:

Det Ralph E Vitale T.P.

of No. T.P., County of Queens,

City of New York, being duly sworn, says, that on April 22, 19 64 at about 7:25A M.

at 74th St IRT Train at Roosevelt Ave Station

in the County of Queens City and State of New York,

the defendant Marjorie Napper

did violate Section 1990-3 of the P L in that thedeft did place herself about 100 ft North of the Station on the Railway tracks and did by her presence hinder, obstruct or delay the passage of any train.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me

April 22, 19 64

Complainant *Squad*

Lieutenant-Sergeant

Judge

Pending Leaves: (see R & P 14/26.0)

Vacation

Other Leave:

Form 11-75M-701524(63) 114

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK,
COUNTY OF Queens } ss.:

Ptl.McDuffy Taylor, Shield 720, NYC Transit being duly sworn, says

that at 7:30A M on April 22, 1964, at 74th St Station IRT Subway

in the County of Queens, City and State of New York,

the defendant Bruce Powsner

committed the offense of disorderly conduct in violation of Section 722, Sub-division 9 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, ~~the defendant~~ at the above time and place the deponent observed the defendant laying down in the doorway of a train and using his feet to hold the door open. The Defendant by his actions caused the train to be delayed and annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

April 22, 1964

Manuel Gomez
Judge.

Pending Leaves: (see R & P 14/26.0)

Vacation

Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl.McDuffy Taylor, Shield 720, NYC Transit being duly sworn, says that at 7:30A M on April 22, 1964, at 74th St Station IRT Subway in the County of Queens, City and State of New York, the defendant Bruce Powsner

committed the offense of disorderly conduct in violation of Section 722, Sub-division 9 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, ~~the defendant~~ at the above time and place the deponent observed the defendant laying down in the doorway of a train and using his feet to hold the door open. The Defendant by his actions caused the train to be delayed and annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964
Manuel Gomez *Judge.*

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Det D O'Shaughnessy being duly sworn, says that at 12:15P M on Ramp to World's Fair between Gate and Subway station in the County of Queens, City and State of New York, the defendant John Doe

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did use loud and boisterous language and did interfere with passersby and did cause a crowd to collect and did refuse to move on when ordered to do so.

Necessary force had to be used to effect the arrest.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
Apr 22, 64
, 19

Pending Leaves: (see R & P 14/26.0)
Vacation

36—30M-700794(62) 447

AFFIDAVIT—GENERAL
SUMMARY OFFENSE

Criminal Court of the City of New York

Part ....1B....., County of ..... Queens .....

CITY OF NEW YORK
COUNTY OF Queens } ss.:

..... Det. D. O'Shaughnessy .....

of No. ..... 16 Div ....., County of ..... Queens .....,
City of New York, being duly sworn, says, that on ..... April 22, ..., 1964, at about 12:15P M.
at World's Fair between Main Gate and Subway Station (Gotham Gate) .....
in the County of ..... Queens ..... City and State of New York,
the defendant ..... John Doe .....

was and is a vagrant within the meaning of sub 1 Section 887 of the Code of Criminal Prodédure in that the deft not having any visible means of support to maintain himself, lives without employment.
Deponent states that when questioned as to his means of support or place of abode after having been placed under arrest on another charge refused to make any statement as to his means of support or maintaining himself.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me
April 22, ..., 1964

....
Complainant *Squad*

....
Lieutenant-Sergeant *Judge*

Pending Leaves: (see R & P 14/26.0)
Vacation .....
Other Leave: .....
.....

Form 11-75M-701524(63) 114

DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK,
COUNTY OF Queens } ss.:

Ptl. John Bray, Shield 21089, TPF
being duly sworn, says that at 1:15P M on April 22, 1964, at City Bldg, Worlds Fair
Queens
in the County of ....., City and State of New York,
the defendant Erla Ageirsson

committed the offense of disorderly conduct in violation of Section 722, Sub-division 3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did congregate with others at the above time and place and did refuse to move on when told by the deponent to do so. The Defendant was told on three occasions to move on and refused to do so.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964

Manuel Gomes
Judge.

.....
Pending Leaves: (see R & P 14/26.0)
Vacation .....
Other Leave: .....
.....

Form 11–75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1 B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Felix Koretsky being duly sworn, says

that at 12:52 ~~2:00~~ PM on Apr 22, 19 64 at In front of U S Pavilion at World's Fair in the County of Queens, City and State of New York,

the defendant Ralph Sutliff

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did sit in a landscaped area and when ordered to move on refused to do so causing a crowd to collect.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11–75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Roger Beachey 12591 being duly sworn, says

that at 1:35 PM on Apr 22, 19 64 at N Y C Bldg in World's Fair in the County of Queens, City and State of New York,

the defendant Dorothy Conway

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did act in such a manner as to annoy, disturb, interefere with and obstruct others from entering the N Y City Bldg by sitting down in the doorway and did refuse to move on when ordered to do so.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 1964

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl.W. Dantschisch, Shield 6197, 66th Sq. being duly sworn, says that at 12:50 M on April 22, 19 64, at in front US Bldg, Worlds Fair in the County of Queens, City and State of New York, the defendant Maureen Murphy acting in concert with Mary Harris

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendants did act in such a manner as to annoy, disturb & interfeare with and act offensively to others by shouting, singing and chanting during a formal ceremony at the Worlds Fair.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964

Manuel Gomez
Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Joseph Gabriele being duly sworn, says that at 1:35 PM on Apr 22, 19 64, at N Y C BLDG in World's Fair in the County of Queens, City and State of New York, the defendant Donald Widman

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did interefere with and obstruct others from entering the N Y C Bldg by sitting down in the doorway thereto and did refuse to move on when ordered to do so.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Det James Hartigan being duly sworn, says that at 12:50PM on Apr 22, 19 64, at U S Pavilion World's Fair in the County of Queens, City and State of New York, the defendant Marla Lippert

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did act in such a manner as to annoy, disturb and interfere with others by the use of loud and boisterous noise and singing during President's Speech and did lie down upon the grass and refuse to move on when ordered to do so.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1 B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Rebecca Det A Reynolds being duly sworn, says that at 12:50PM on Apr 22, 19 64 at U S Pavilion World's Fair in the County of Queens, City and State of New York, the defendant Rebecca Bonner

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did act in such a manner as to annoy, interefere with and disturb others by the use of loud and boisterous language and singing during the President's speech and did lie down upon the grass and caused a crowd to collect when she refused to move on when ordered to do so.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
Apr 22, 19 64

Judge.

Det. Arthur Reynolds

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl. Robert A. Fives, Shield 13618, TPF being duly sworn, says that at 1:35PM on April 22, 19 64, at NY City Building Worlds Fair in the County of Queens, City and State of New York, the defendant Judith T. Pierce

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant while sitting on the steps leading to the doorway of the New York City Bldg the defendant was loud and boisterous by singing and chanting to the annoyance of others. The Defendant did obstruct the entrance thereto and refused to move when ordered to do so. The Defendant by her actions caused annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Manuel Gomez *Judge.*

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1 B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Francis Martin being duly sworn, says that at 1:20PM on Apr 22, 19 64 at N Y C Bldg World 's Fair in the County of Queens, City and State of New York, the defendant Paula Gordon

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did at the above time and place obstruct the doorway to the N Y C bldg by sitting in the doorway and by her actions did annoy the persons in the vicinityand did cause crowd to collect.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl. Robert A. Fives, Shield 13618, TPF being duly sworn, says that at 1:35PM on April 22, 19 64, at NY City Building Worlds Fair in the County of Queens, City and State of New York, the defendant Judith T. Pierce

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant while sitting on the steps leading to the doorway of the New York City Bldg the defendant was loud and boisterous by singing and chanting to the annoyance of others. The Defendant did obstruct the entrance thereto and refused to move when ordered to do so. The Defendant by her actions caused annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Manuel Gomez *Judge.*

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1 B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Francis Martin being duly sworn, says that at 1:20PM on Apr 22, 19 64 at N Y C Bldg World 's Fair in the County of Queens, City and State of New York, the defendant Paula Gordon

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did at the above time and place obstruct the doorway to the N Y C bldg by sitting in the doorway and by her actions did annoy the persons in the vicinityand did cause crowd to collect.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11–75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl John Kobilca being duly sworn, says

that at 1:30 PM on Apr 22, 1964, at in front of 94-41 43rd Ave

(110th Pct) in the County of Queens, City and State of New York,

the defendant Janet Rose

committed the offense of disorderly conduct in violation of Section 722, Sub-division 3 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant did congregate with others on the street in front of the 110th Pct on a Public Street and did refuse to move on when ordered to do so.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

April 22, 1964

Judge.

Pending Leaves: (see R & P 14/26.0)

Vacation

Other Leave:

Form 11–75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Kings

STATE OF NEW YORK, }
COUNTY OF Kings } ss.:

Det Joseph Zielinski 70th Squad being duly sworn, says

that at 1 P M on April 22, 1964, at US Pavilion World's Fair

in the County of Queens, City and State of New York,

the defendants Michael Greenberg and Karl V. Reer

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendants were loud and boisterous, refused to desist and move on when ordered to do so by deponent, causing a crowd to gather into a restricted area, to the annoyance of persons in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,

April 22, 1964

Judge.

Pending Leaves: (see R & P 14/26.0)

Vacation

Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Walter McMahon 1st Pct World's Fair being duly sworn, says that at 12:30P on April 22, 19 64 at NYC Building World's Fair in the County of Queens, City and State of New York, the defendant Helen Reyes

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant was loud and boisterous, refused to desist and move on when ordered to do so by deponent, causing a crowd to gather blocking the entrance and exit of the building to the annoyance of persons entering and leaving the said building and others in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl Richard Fisher 1st Pct World's Fair Police being duly sworn, says that at 11:50AM on April 22, 19 64, at NYC Building World's Fair in the County of Queens, City and State of New York, the defendant Gular Glover

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant was loud and boisterous, sitting on the ground, refused to desist and get up, causing a crowd to gather blocking the entrance of the building to the annoyance of persons entering, leaving and others in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK,
COUNTY OF Queens } ss.:

Ptl Walter McMahon 1st Pct World's Fair being duly sworn, says that at 12:30P on April 22, 19 64 at NYC Building World's Fair in the County of Queens, City and State of New York, the defendant Helen Reyes

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant was loud and boisterous, refused to desist and move on when ordered to do so by deponent, causing a crowd to gather blocking the entrance and exit of the building to the annoyance of persons entering and leaving the said building and others in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK,
COUNTY OF Queens } ss.:

Ptl Richard Fisher 1st Pct World's Fair Police being duly sworn, says that at 11:30M on April 22, 19 64, at NYC Building World's Fair in the County of Queens, City and State of New York, the defendant Gular Glover

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendant was loud and boisterous, sitting on the ground, refused to desist and get up, causing a crowd to gather blocking the entrance of the building to the annoyance of persons entering, leaving and others in the vicinity.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 19 64

Judge.

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

Form 11-75M-701524(63) 114 DISORDERLY CONDUCT

Criminal Court of the City of New York

Part 1B, County of Queens

STATE OF NEW YORK, }
COUNTY OF Queens } ss.:

Ptl. G.W. Duguid, Badge 513, Worlds Fair Police being duly sworn, says that at 11:55AM on April 22, 1964, at entrance to NY City Pavillion, Worlds Fair in the County of Queens, City and State of New York, the defendant Bayard Rustin acting in concert with Henry Schwarschild

committed the offense of disorderly conduct in violation of Section 722, Sub-division 2 & 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendants above while congregated with others were loud and boisterous and when told by the deponent on three seperate occasions to desist and move on refused to do so. The Defendants were blocking the the entrance to the building and by their actions caused annoyance to numerous persons.

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me,
April 22, 1964

Manuel Gomez *Judge.*

Pending Leaves: (see R & P 14/26.0)
Vacation
Other Leave:

7

Part 1B

Record of Duplicate Bonds

Docket No.	Defendant	
B2592	Steve Amdur	$500 Cash Bail
B2534	Judith Joerndt	" "
B2310	Allen Edmonton	" " "
B2520	Sheila Jampel	" " "
B2563	Paul Jasper	" " "
B2225	Ruth Rodriguez	" " "
B2538	Robert Carroll	" " "
B2581	Monique Bascoe	" " "
B2325	Robert Larsen	" " "
B2514	Alice Jacobs	" " "
B2553	Arthur Oesterreicher	" " "
B2312	Christine Palmer	" " "
B2578	Jeffrey Galper	" " "
B2574	Gerald Lenny	" " "
B2576	William Abbaskin	" " "
B2589	Martin Jacobs	" " "
B2590	Earl Scott	" " "
B2596	Paul Nyden	" " "

B2521 Cynthia Post - 2 Surety Bonds
B2548 Carlisle Yearwood 2 Surety Bonds

Cash Bail Forfeitures filed for Judgement

Docket No.	Defendant	Charge	Cash Bail Amt
B2430	Jacqueline Butler	Dis Con	$5.00
B2432	Gladys Moore	"	"
B2439	Geneva Young	"	"
B2442	Brooker Moore	"	"
B2445	Herbert Hardy	"	"
B2448	John Stelling	"	"
B2460	Steve Durham	"	"
B2473	Taylor Jones	"	"
B2475	Lewis Ford	"	"
B2476	Joan Perry	"	"
B2499	Barbara Westfield	"	"
B2505	Loretta Hall	"	"

JAMES E. BROWN
Insurance
168-01 - 144TH AVENUE
JAMAICA, N. Y. 11434
LAURELTON 7-8405

Mr Farmer:

June 11th 1964

You will find enclosed the material I told you that I would mail.

If I can be of any further service to you don't hesitate to call on me.

James E Brown

" CORE BONDS"

	NAME	AMOUNT	RETURN DATE
1.	ABEL, Katy	500.	5/15/64
2.	ABRASHKIN, William	500.	5/6/64
3.	ADKINS, ALBERT ?	500.	5/25/64
4.	ADKINS, Albert ?	500.	5/25/64
5.	ADLER, Elizabeth	500.	5/6/64
6.	ALEXANDER, Sue	500.	5/25/64
7.	ALPER, Donald	500.	5/13/64
8.	AMOUR, Steve	500.	5/6/64
9.	ANDERSON, Franklin	500.	5/5/64
10.	ANDERSON, Franklin	500.	5/5/64
11.	ASGEIRSSON, Eula 1851, 722(3)	1000.	5/8/64
12.	ASGEIRSSON, Eula ?	500.	5/8/64
13.	BACHELOR, William	500.	5/4/64
14.	BARAIN, HILLER	500.	5/18/64
15.	BARRON, Jerry	500.	5/7/64
16.	BARTOS, Michael	500.	5/6/64
17.	BASCOE, Monique	500.	5/6/64
18.	BAUMANN, Hully	500.	5/21/64
19.	BELL, Velta	500.	5/18/64
20.	BEEBER, Tom	500.	5/6/64
21.	BOHONAN, Farmanica	500.	5/4/64
22.	BERMAN, Andrew	500.	5/14/64
23.	BERMAN, Andrew	500.	5/14/64
24.	BERMAN, Andrew	500.	5/14/64
25.	BERMAN, Andrew	500.	5/14/64
26.	BERMAN, Andrew	500.	5/14/64
27.	BOCH, Arlene *	500.	5/6/64
28.	BOODIN, Kolgal	500.	5/15/64
29.	BOOKCHEIM, Murray	500.	5/15/64
30.	BONNER, Rebecca 1851, 722(2)(4)	500.	6/12/64
31.	BRADY, Mark	500.	5/4/64
32.	BRADY, Mark	500.	5/4/64
33.	BRADDOCK, George	500.	5/14/64
34.	BRAVERMAN, Jan	500.	5/15/64
35.	BONNIE, Biscoe	500.	5/6/64
36.	BROGAN, Patrick	500.	5/7/64
37.	BROWN, Bill	500.	5/25/64
38.	BROWN, BILL	500.	5/25/64
39.	BROWN, Claudia 1851	500.	5/28/64
40.	BROWN, Eumeleda	500.	5/15/64
41.	BROWN, Marshall	500.	5/25/64
42.	BROWN, Marshall	500.	5/25/64
43.	BUDARIN, George	500.	5/15/64

44.	BULKIN, Joel	500.		5/5/64
45.	BULKIN, Joel	500.		5/5/64
46.	BULKIN, Joel	500.		5/5/64
47.	BUTLER, Jacqueline 2036	500.	B2346	5/6/64
48.	CANADO, Frederick	500.		5/7/64
50.	CHERNOFSKY, Daniel *	500.		5/6/64
51.	CHERNOWITZ, Alex	1000.		5/25/64
52.	CHERNOWITZ, Alex	500.		5/25/64
53.	CLARK, John	500.		5/18/64
54.	CLARK, Jimmie	500.		5/25/64
55.	CLARK, Jimmie	500.		5/25/64
56.	CLAYTON, Marris	500.		4/27/64
57.	COHEN, Jerry	500.		5/6/64
58.	CONWAY, Dorothy 722(2)	500.		5/7/64
59.	COOK, Ronnie 1851	1000.		5/27/64
60.	CORBETT, Phylliss	500.		5/25/64
61.	CORBETT, Phylliss	500.		5/25/64
62.	COY, Ronald	500.		5/25/64
63.	CROWNER, David	500.		5/22/64
64.	CULVIN, Robert	500.		5/12/64
65.	DANTZLER, Thelma 1851	500.		5/26/64
66.	DAVIS, Loria	500.		5/18/64
67.	DAVIS, Mars	500.		5/12/64
68.	DAVIS, PAUL	500.		5/14/64
69.	DAVIS, Paul	500.		5/14/64
70.	DAVIS, Roy	500.		5/15/64
71.	DICKSON, John	500.		5/4/64
72.	DIGILIO, Joseph	500.		5/7/64
73.	DIX, Peter	500.		5/12/64
74.	DIXON, John	500.		5/4/64
75.	DOCTOR, Henry	500.		5/25/64
76.	DOCTOR, Henry	500.		5/25/64
77.	DOE, John	500.		5/4/64
78.	DRAUICH, Jay *	500.		5/6/64
79.	DREW, Joseph	500.		5/7/64
80.	DREW, Joseph	500.		5/18/64
81.	DUBUMAN, David	500.		5/7/64
82.	DUE, Patricia	500.		5/25/64
83.	DUE, Patricia	500.		5/25/64
84.	DURHAM, Steve	500.		5/6/64
85.	EINHORN, CARL 1851, 722(2)(4)	500.		5/12/64
86.	EISENBERG, Eric	500.		5/11/64
87.	EPSTEIN, Howard	500.		5/4/64
88.	EPSTEIN, Howard	500.		5/4/64
89.	ESPADA, Frank	500.		5/6/64
90.	FARBER, Tedi	500.		5/13/64
91.	FARRAR, Winifred*	500.		5/6/64
92.	FARMAIN, Barbara	500.		5/4/64
93.	FEINGOLD, Paul *	500.		5/6/64
94.	FERGUSON, Earthline	500.		5/7/64
95.	FISHER, John *	500.		5/12/64
96.	FLUG, Michael	500.		5/12/64
97.	FOA, Sylvania * 2036	500.	B2355	5/6/64
98.	FORBS, Williams	500.		5/6/64
99.	FORD, LOUIS	500.		5/6/64

100.	FOSTER, Joan	500.		5/6/64
101.	FRUCHTER, Norman	500.		6/4/64
102.	GABNIELSKY, Robert	500.		5/15/64
103.	GALPER, Jeffry	500.		5/6/64
104.	GEIGER, Helen	500.		5/6/64
105.	GETHERS, Joan 1851, 722(2)(4)	500.		5/11/64
106.	GILMARTER, Allan	500.		5/2/64
107.	GLUSHAKAN, Bruce	500.		5/7/64
108.	GORDON, PAULA 722(2), 1851	500.		5/25/64
109.	GOULD, Paul	500.		5/12/64
110.	GREEN, Ed Smith	500.		5/11/64
111.	GREEN, Ernie 1851	1000.		5/28/64
112.	GREENBERG, MICHAEL 1851, 722(2)	500.		4/30/64
113.	GRIPPER, Vernall	500.		5/25/64
114.	GRIPPER, Vernall	500.		5/25/64
115.	GRONES, xBrxxx Brus	500.		5/6/64
116.	GRUZEN, Marjorie	500.		5/11/64
117.	GUTMAN, M.	500.		5/12/64
118.	GUTMAN, M.	500.		5/12/64
119.	HAHBOHM, William	500.		5/18/64
120.	HALL, Loretta	500.		5/6/64
121.	HOLPER, James	500.		5/11/64
122.	HARDY, Herbert	500.		5/12/64
123.	HARRINGTON, Donald	500.		5/18/64
124.	HARRINGTON, Edward M.	500.		5/18/64
125.	HARRIS, Clayton	500.		4/27/64
126.	HARRIS, JANE	500.		5/6/64
127.	HARRIS, Jonathan	500.		5/12/64
128.	HARRIS, Mary	500.		5/20/64
129.	HARRIS, Mary	1000.		5/20/64
130.	HARRIS, Robert	500.		5/11/64
131.	HEIFETZ, Hanry	500.		5/25/64
132.	HEWITT, Sarah 1851	500.		5/26/64
133.	HIST, Owen	500.		5/14/64
134.	HOOKES, Lourras	500.		5/25/64
135.	HOOKES, Lourras	500.		5/25/64
136.	HOROWITZ, Rochelle 1851	500.		5/28/64
137.	HURWITZ, Thomas	500.		5/5/64
138.	HUTCHINAS, Vivian	500.		5/6/64
139.	INSOLIA, Joyce	500.		5/6/64
140.	JACKSON, Blyden 1851, 722	500.		5/22/64
141.	JACOBS, Alice* 2036	500.	B2347	5/6/64
142.	JACOBS, Martin*	500.		5/6/64
143.	JAFFE, Robert	500.		5/6/64
144.	JAMPEL, Sheila 2036	500.	B2353	5/6/64
145.	JASMIN, Judith	500.		5/6/64
146.	JASPER, Paul	500.		5/6/64
147.	JENKINS, Loren	500.		5/25/64
148.	JENKINS, Loren	500.		5/25/64
149.	JONES, Jimmie	500.		5/22/64
150.	JONES, Taylor	500.		5/6/64

151.	JONES, William	500.		5/22/64
152.	KAGAN, Georgette	500.		5/6/64
153.	KAHN, Thomas	500.		5/4/64
154.	KEHOL, Katherene	500.		5/12/64
155.	KALENBRT, Gus	500.		5/4/64
156.	KALENGRT, Gus	500.		5/4/64
157.	KALIN, THOMAS	500.		5/18/64
158.	KALINTGIS, Gus	500.		5/4/64
159.	KATZ, Jeffrey	500.		5/12/64
160.	KEARY, Ershine	500.		5/15/64
161.	KEITH, Frances	500.		5/12/64
162.	KEIR, Eva	500.		5/15/64
163.	KEVEN, Eliot	500.		5/12/64
164.	KINSLER, Michael 722(2)(4), 1851	500.		5/7/64
165.	KIT, Komatsu (NAME REVERSED?)	500.		5/11/64
166.	KLEIN, Michael	500.		5/6/64
167.	LARSEN, Robert 722(2), 1851	500.	Friend pd one bnd	5/22/64
168.	LAWSON, Carol	500.		5/12/64
169.	LIPPET, Marla 1851, 722(2)(4)	500.		6/12/64
170.	LITTLE, William	500.		5/14/64
171.	LITTLE, William	500.		5/14/64
172.	LLOYD, Robert	500.		5/4/64
173.	LOUIS, Joseph	500.		5/6/64
174.	LUDWIG, G. 1851	500.		5/21/64
175.	LUDWAG, G.	500.		5/21/64
176.	LYMIS, Carolyn	500.		5/21/64
177.	MADISON, William	500.		5/12/64
178.	MAIDMAN, Maynard	500.		5/12/64
179.	MANUEL, George	500.		5/6/64
180.	MAPP, Thomas } Bridgm?	500.		5/4/64
181.	MAPP, Thomas }	500.		5/4/64
182.	MARGOLIES, Michael	1500.		4/24/64
183.	MARGOLIES, Michael	500.		4/24/64
184.	MARGOLIES, Michael	500.		4/24/64
185.	MARKMAN, Barry	500.		5/25/64
186.	MARSHARD, Jacques	500.		5/22/64
187.	MARTIN, Rubin	500.		5/4/64
188.	MARTIN, Russell	500.		5/6/64
189.	MARTINEZ, Nicasio 1851	500.		5/28/64
190.	MEYERS, Robin	500.		5/22/64
191.	MILLER, Florence	500.		5/6/64
192.	MILLER, Robert	500.		5/6/64
193.	MILLER, William	500.		5/22/64
194.	MIRANDO, Victor, Jr.	500.		5/6/64
195.	MITCHELL. Eliz	500.		5/12/64
196.	MITCHELL, Jeffery	500.		5/12/64
197.	MOORE, Booker	500.		5/6/64
198.	MOORE, Gladys, 2036	500.	B 2349	5/6/64
199.	MURPHY, Maureen 722(2), 1851	1000.		5/20/64
200.	MURPHY, MAUREEN	500.		5/20/64
201.	MYERS, Robin	500.		5/22/64
202.	McCORMICK, Bob	500.		5/13/64
203.	MCLAUGHLIN, Andrew	500.		5/12/64
204.	NELSON, Gilbert	500.		5/7/64
205.	NEVIN, Randy	500.		5/11/64
206.	Nieogs, Robert	500.		5/15/64
207.	NYDE, Paul	500.		5/6/64

208.	OESTERREICHTER, Arthur *	500.		5/6/64
209.	OLGORMAN, Joan * O'GORMAN	500.		5/6/64
210.	OLIVER, Harvey	500.		5/6/64
211.	PAIN, Robert	500.		5/7/64
212.	PADOW, Robert	1500.		4/24/64
213.	PADOW, Robert	500.		4/24/64
214.	PADOW, Robert	500.		4/24/64
215.	PADUCE, Michael	500.		5/22/64
216.	PALMER, Christine 1851, 722(2)(4)	500.		5/21/64
217.	PATTERSON, Susan 1851	500.		5/20/64
218.	PAULY, John 1851	500.		5/30/64
219.	PECK, James	500.		5/18/64
220.	PEAKE, James Jr.	500.		5/6/64
221.	PEAKE, James Jr. Penny, Gerald	500.	500	5/6/64 5/6/64
222.	PERDU, Lane	500.		5/25/64
223.	PERDU, Lane	500.		5/25/64
224.	PEREZ, Louis	500.		5/6/64
225.	PERMUTTER, Steve *	500.		5/6/64
226.	PERRA, Ivory	500.		5/6/64
227.	PETERS, STEVEN	500.		5/4/64
228.	PETERS, Steven	500.		5/4/64
229.	PIERCE, Judith 1851, 722(2)(4)	500.		5/12/64
230.	PISSAREVSKY, Joseph	500.		5/6/64
231.	PLUMNES, Lucille	500.		5/25/64
232.	PLUMNES, Lucille	500.		5/25/64
233.	POLLOCK , Danny	500.		5/7/64
234.	PARLIN, Jeanne Lee	500.		5/21/64
235.	POST, Cynthia 2036	500.	B 2354	5/6/64
236.	PUTTERMAN, Harriett	500.		5/6/64
237.	QUINTYNE, Delores 2036	500.	B2352	5/6/64
238.	RABIN, Julius	500.		5/6/64
239.	REER, Karl V. 1851, 722(2)	500.		4/30/64
240.	REYES, Helen 722(2), 1851, 1851	500.		5/7/64
241.	ROBERSON, Frank	500.		5/25/64
242.	ROBERSON, Frank	500.		5/25/64
243.	ROBERTS, Eda	500.		5/25/64
244.	ROBERTS, Eda	500.		5/25/64
245.	ROBERT, Jaffe	500.		5/6/64
246.	ROBERT, Llyod	500.		5/4/64
247.	ROBINSON, Louis	500.		5/6/64
248.	RODRIGUEZ, Ruth	500.		5/6/64
249.	RONEY, Jemera 2036	500.	B2351	5/6/64
250.	ROTI, Vincent	500.		5/7/64
251.	RUBIN, Martin	500.		5/4/64
252.	RUBIN, Martin	500.		5/4/64
253.	RUSHING, Byron	500.		5/12/64
254.	RUSHING, Lawrence	500.		5/12/64
255.	SCHAPIRO, Robert	500.		5/7/64

256.	SCHMIDT, Thomas	500.	6/8/64
257.	SCOTT, Earl	500.	5/6/64
258.	SHARROW, Elouise L.	500.	5/11/64
259.	SHATKIN, Norman	500.	5/15/64
260.	SHERMAN, Eugene	500.	5/11/64
261.	SHERMAN, Eugene	500.	5/11/64
262.	SHITKIN, Joan	500.	5/15/64
263.	SIEGAL, Larry	500.	5/15/64
264.	SKLAR, Eugene	500.	5/25/64
x265			
265.	SKLAR, Eugene	500.	5/25/64
266.	SKLAR, Eugene	500.	5/25/64
267.	SKLAR, Eugene	500.	5/25/64
268.	SLUTSKY, Martin	500.	5/7/64
269.	SOLGANICK, Allen	500.	5/6/64
270.	SOLGANICK, Allen	500.	5/6/64
271.	STARZZNSKI, Susan	500.	5/12/64
272.	STATMAN, James *	500.	5/6/64
273.	STELLING, Joan	500.	5/6/64
274.	STEVENS, Patricia	500.	5/25/64
275.	STEVENS, Patricia	500.	5/25/64
276.	STRAUSS, Arthur	500.	5/7/64
277.	SUTLIFE, Jack ? sutliff, Ralph	500.	5/4/64
278.	TAYLOR, Francis 1851	500.	5/15/64
279.	TAYLOR, Sandra 1851	500.	5/15/64
280.	TENNEY, Gerald	500.	5/6/64
281.	THOMPSON, John	500.	5/12/64
282.	TISHMAN, Mark	500.	5/6/64
283.	TRESTMAN, Irene	500.	5/12/64
284.	TOURNANT, Eugene	500.	5/11/64
285.	VAUDEURS, Kay	500.	5/12/64
286.	WALKER, Margaret	500.	5/15/64
287.	WALLERSTEIN, Steve	500.	5/7/64
288.	WALKER, PAT *	500.	5/6/64
289.	WEINERMAN, Diane (2 Bonds)	500.	5/7/64
x290.	x[illegible]		
290.	WEINSTOCK, Rosalind 1851	500.	5/15/64
291.	WEINSTONE, Laurie	500.	5/7/64
292.	WEISMAN, Dena *	500.	5/6/64
293.	WEISS, Joel	500.	5/22/64
294.	WEST Frederick	500.	5/6/64
295.	WEST, Frederick	500.	5/6/64
296.	WESTERFIELD, Barbara *	500.	5/6/64
297.	WIDMAN, Donald 722(2), 1851	1000.	5/15/64
298.	WIDMAN, Donald	500.	5/13/64
299.	WILSON, Theodore	500.	5/21/64
300.	WINTOR, Frederick	500.	5/12/64
301.	WRIGHT, Alberta 1851	500.	5/28/64
302.	YEARWOOD, Carlisle	500.	5/6/64
303.	YOUNG, Geneva 2036	500. B 2356	5/6/64
304.	ZAGARELL, Allen	500.	5/13/64
305.	ZIEFERT, Marjorie *	500.	5/6/64
306.	ZINN, Sheldon	500.	5/6/64

EX 5 - 13 - 64

DOC 1322

A Nº 35160

34 — (3-63 - 200 Bks.) NO. 1

THE PEOPLE, Etc.

vs.

DONALD ALPER

Offense DC 1-2-3

Surety V. COLEMAN

Residence 38 PK. ROW CARE OF C.O.R.E

N.Y. N.Y

NEW YORK, APR. 24 1964

THIS IS TO CERTIFY that the above named defendant was held on H - 2, 1964

by HON. CHASSEN presiding at 1 B QUEENS Court, in the

sum of FIFTY DOLLARS. RECEIPT IS ACKNOWLEDGED from the

above named surety of cash OR securities deposited in lieu of bail herein as follows:

CASH ... FIFTY ... DOLLARS $ 50.00

Cert. No.	Description of Securities	Coupons Attached From	Coupons Attached To	Amount
			Total Securities $	

Val Coleman

N.Y. 13

Warden—Clerk

IMPORTANT—*Notice*:—If securities are deposited this receipt must be surrendered to the Director of Finance of the City of New York at the time the depositor becomes entitled to the return of the securities. The surrender of the receipt by the HOLDER thereof shall constitute a full and valid delivery of the described securities and release the Director of Finance from any and all liability thereof. Securities must be called for at this office. Checks for cash will be mailed.

DIRECTOR OF FINANCE OF THE CITY OF NEW YORK
Room 201, Municipal Building, NEW YORK CITY.

Receipt to Surety.

DISCLAIMER NOTE

Scores of individual surety receipts and case disposition records have not been filmed. They can be found at the Archives Division, State Historical Society of Wisconsin.

MSS SW SEDFEB WRIGHT, MIRIAM VS WRIGHT, RONALD BRONX, NEW YORK 1967

...University of Wisconsin

Please Retain Original Order

FAMILY COURT OF THE STATE OF NEW YORK

City of New York, County of the Bronx.

In the matter of Meriam Wright, Petition	)	
	)	INDEX NO.
against	:	
	)	NOTICE OF APPEAL
Ronald Wright,	)	FROM FAMILY COURT
Respondent	)	

SIRS:

PLEASE TAKE NOTICE that the petitioner hereby appeals to the Appellate Division of the Supreme Court, Bronx County, from so much of the order entered in the office of Clerk of the Family Court of the State of New York, City of New York, County of Bronx, on July 14, 1967, as orders and directs the payment of past due alimony payments for the suppport of petitioner in the amout of three hundred ($300) dollars to be paid to the Grand Concourse Welfare Center of the New York City Department of Social Services.

Dated:

Very truly yours,

Stephen M. Nagler
Attorney for Petitioner
150 Nassau Street, New York, N.Y.
10038

TO: Family Court of the
State of New York
County of the Bronx
1118 Grand Consourse
Bronx, New York

J. Lee Rankin, Corporation Counsel of the City of New York
1656 Municipal Building
New York, New York 10007

Salvatore J. Milano
851 Grand Concourse
Bronx, New York 10451

Legal Aid Soc. BA7-2755

FORM FOR WELFARE TELEPHONE CALLS

Client's Name Mrs. ~~Harrison~~ Meriam Wright Date

Address 552 St. Paul's Place Bronx 10456 Tel# 992-4149

Welfare Center Grant Concourse Tele # 579-7898

Client's Case Worker ~~[redacted]~~ Mrs. Gibbons Unit

Case # ADC No. in family 3 children

Referred by:

Description of Case or Problem

Welfare 3 mos.; working
husband sending money - supposed
- owed money to welfare dept
& now to Client ($300)

Court: Family Court on 1111 Grant Concourse (6th fl. 57)
involved alimony from Mar 16th & held Sat. 14th (9:00 am)

Hus. must pay $300. by Thurs.

judge

husband employed - almost a year.
- metal works plant

Action Taken

Mrs Teller - Probation

By

Supreme Court of the State of New York,
Appellate Division

Meriam Wright, petitioner
against
Ronald Wright, respondent

Index No.

AFFIDAVIT FOR LEAVE TO APPEAL AS A POOR PERSON

Meriam Wright, being duly sworn, says:

1. I am the above-named ~~client~~ plaintiff-appellant and make this affidavit pursuant to §1101 CPLR for leave to appeal as a poor person. reasons for order to show cause

2. I have filed a notice of appeal with the Family Court of the State of New York, County of the Bronx, 1118 Grand Concourse, Bronx, New York. ~~This~~ The proceedings involved are an ~~alimony proceedings~~ action for the payment of ~~back~~ alimony, held July 14, 1967. The court ~~ordered that~~ found that ~~the~~ payments were due to me in the sum of 300 dollars, ~~or~~ but ordered the defendant-respondent to pay them to the Grand Concourse Welfare Center.

3. a) amount & sources of income
b) list of property & its value

4. I am unable to pay the costs, fees and expenses necessary to prosecute the appeal, and am unable to obtain them. Unless the order herein prayed for be granted, I will be unable to prosecute my appeal

5. No other person is beneficially interested in any recovery ~~sought, and, if so, whether every such person is unable to pay such costs, fees, and hope~~ sought in this appeal.

6. Stephen M. Nagler, attorney and counsellor-at-law, has certified that I have a good and meritorious appeal, and that said Stephen

M. Nagler has no ~~interest~~ whatsoever in my case; I am informed that ~~he~~ an attorney assigned by this Court must act without compensation except for such reasonable ~~services~~ sum which the Court may order ~~him to pay~~ paid to him for his services and taxable disbursements in the event of recovery. No agreement has been made by me with the same Stephen M. Nagler, Esq.; relative to any compensation.

7. No previous application for the same or similar relief has been made.

WHEREFORE, I respectfully ask that an order of this Court be granted permitting to appeal as a poor person, that I may not be required to pay any fees or to print the Record or Brief of Appeal, and that Stephen M. Nagler, Esq.; be assigned to me as attorney to prosecute my appeal.

Miriam Wright

Notarize.

Supreme Court of the State of New York,
Appellate Division

~~B. Wright~~

Meriam Wright, Petitioner

against

Ronald Wright, Respondent

Index No.

[all caps]

~~Notice of Appeal~~ Order to Show Cause for Leave to Prosecute An Appeal as a poor person

Upon the annexed affidavit of Meriam Wright, sworn to _____, 1967., the certificate of Stephen M. Naefer, attorney-at-law, dated _____, 1967, ~~the affidavit of~~ ~~Meriam Wright~~

[date]

sworn to _____, and upon all the papers and proceedings heretofore and herein,

Let the defendant-respondent Ronald Wright, show cause before this Court, at a _____ Term, to be held at _____, or as soon thereafter as ~~possible~~ counsel can be heard, why Meriam Wright, the plaintiff-appellant should not be granted leave to prosecute this appeal as a poor person, and why he ~~should~~ should not have such other and further relief as the court shall deem just.

Sufficient reason therefor appearing, let service of a certified copy of this order, and

of the affidavits and certificate on which it is made, on defendant's/respondent's attorney, on or before [time] on [date] be sufficient

MSS SE-FRE
Box
Andrew Young v. L.O. Davies, et al. - case
1964
Please Retain Original Order

JA. 15 1964

MEMORANDUM

From: Tobias Simon
223 S.E. First St.
Miami, Florida 33131

Kunstler Kunstler & Kinoy
William M. Kunstler
511 Fifth Avenue
New York, N.Y.

The attached preliminary injunction which was issued by Chief Judge Bryan Simpson of the United States District Court for the Middle District of Florida on June 9, 1964, represents one of the most sweeping restraints of public officials in civil rights cases in recent years. In it, Judge Simpson prohibits the sheriff of St. Johns County and the police chief of St. Augustine from interfering with Negro protest demonstrations in the nation's oldest city.

The two officials had prevented the demonstrators from assembling in downtown St. Augustine, claiming that several previous assemblies had led to violence on the part of the white population. In his opinion Judge Simpson held that this action constituted "unlawful prior restraint of the exercise ... of fundamental rights of freedom of speech, freedom of assembly and of petition for redress of grievances guaranteed by Amendment I and protected against infringement by state action by Amendment XIV to the Constitution of the United States."

The litigation that led to Judge Simpson's order was instituted by Tobias Simon, of Miami, Florida, and Kunstler, Kunstler & Kinoy, of New York, N.Y. At the three-day hearing which took place in Jacksonville, Mr. Simon, William M. Kunstler and Leroy Clark appeared for the demonstrators.

In view of the importance of Judge Simpson's ruling, a copy of the preliminary injunction is enclosed herewith for your information.

6/10/64

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ANDREW YOUNG, Plaintiff, vs. L. O. DAVIS, as Sheriff of St. Johns County, Florida; VIRGIL STUART, Chief of Police of St. Augustine, a Municipal corporation of St. Johns County, Florida; and JOSEPH A. SHELLEY, as Mayor of St. Augustine, Florida, Defendants.	)	No. 64-133-Civ-J

PRELIMINARY INJUNCTION

Upon full hearing, after notice, held herein June 1, 2 and 3, 1964, and in conformity with Findings of Fact and Conclusions of Law filed herein, and upon all proceedings herein, it is now by the Court

ORDERED:

1. That the Defendants, L. O. Davis, Jr., as Sheriff of St. Johns County, Florida; Virgil Stuart, as Chief of Police of the City of St. Augustine, a municipal corporation of the State of Florida, and Joseph A. Shelley, as Mayor of the City of St. Augustine, a municipal corporation of the State of Florida, their agents, servants, employees and any and all persons acting under their authority or in concert with them, are enjoined and restrained, until the further Order of this Court, from enforcing, or attempting to enforce, directly or indirectly, the orders orally promulgated by them on Thursday, May 28, 1964, and Friday,

May 29, 1964, to the Plaintiff, Andrew Young, and others of his class, prohibiting Andrew Young and other Negroes or persons associated with them from peaceful and orderly demonstrations by marching in and about the City of St. Augustine, Florida, and its public streets, sidewalks and parks, at any hour in the night time.

2. Said persons are further enjoined and restrained, until the further Order of this Court, from promulgating, issuing or attempting to enforce orders of a like or similar tenor and effect.

3. This Preliminary Injunction shall issue instanter and be served by the United States Marshal for this District immediately; provided it shall have no further force and effect beyond three days from the date hereof unless the Plaintiff, within three days from the date hereof, files herein his injunction bond, conditioned in usual form, to be taken before and approved by the Clerk of this Court.

DONE AND ORDERED at Jacksonville, Florida, within said District, this June 9th, 1964.

Original signed:
BRYAN SIMPSON

CHIEF JUDGE, MIDDLE DISTRICT OF FLORIDA

Copies mailed to:

WILLIAM M. KUNSTLER, ESQ.,
511 Fifth Avenue,
New York 17, New York.

TOBIAS SIMON, ESQ.,
223 S. E. First Street,
Miami 32, Florida
Counsel for Plaintiff

CHESTER BEDELL, ESQ.,
1520 Barnett Bank Building,
Jacksonville, Florida 32202

ROBERT A. ANDREU, ESQ.,
City Attorney,
St. Augustine, Florida
Counsel for Defendants.

MSS SEDFRE
546

Young, Joe E & Mabrey, Willie H. ALS Stephens, Mrs. Nelson I. Sept, 1963. Rs

State Historical Society of Wisconsin

Please Retain Original Order

No. 15,616

In The

UNITED STATES

COURT OF APPEALS

For the Sixth Circuit

JOE E. YOUNG and WILLIE H. MABREY,

Plaintiffs-Appellees

versus

MRS. NELSON I. STEPHENS, Individually and as Chairman of Congress of Racial Equality,

Defendants-Appellants

Appealed from the
United States District Court
For the Eastern District of Tennessee
Northern Division

Civil Action No. 4772

MAIN BRIEF ON BEHALF OF DEFENDANTS-APPELLANTS WITH APPENDIX

MARTIN SOUTHERN
615½ Market Street
Knoxville, Tennessee 37902
Attorney for Defendants-Appellants

SOUTHERN & SOUTHERN
Of Counsel

STANLEY G. FORD, APPEAL PRINTING SPECIALIST, 509 U.S. COURT HOUSE, NASHVILLE, TENN.

STATEMENT OF QUESTIONS INVOLVED

QUESTION I

THE PRINCIPAL QUESTION INVOLVED IS THAT OF JURISDICTION OF THE UNITED STATES DISTRICT COURT TO REMOVE FROM STATE COURT OF CHANCERY.

THE DISTRICT COURT ANSWERED "NO".

APPELLANTS CONTEND IT SHOULD BE ANSWERED "YES".

QUESTION II

PETITION FOR REMOVAL ALLEGES DIVERSITY OF CITIZENSHIP AND AFFIDAVIT OF PREJUDICE AND LOCAL INFLUENCE. THE DISTRICT COURT HELD THAT THESE WERE INADEQUATE GROUNDS FOR REMOVAL. APPELLANTS IN THEIR BRIEF TO THE LOWER COURT CONCEDED THIS. THEY OFFERED IN THEIR BRIEF TO REMEDY THEIR PETITION BY FILING AN AMENDED PETITION, WHICH THEY DID ON THE SAME DATE AS THE COURT ORDERED TO BE REMANDED, AND SAME WAS MARKED "LODGED" BY THE CLERK ON THE NEXT DAY, AND SAME IS A PART OF THE TECHNICAL RECORD.

QUESTION III

DO THE ALLEGATION OF FACTS EMBODIED IN THE PETITION FOR REMOVAL, THE ANSWER TO ORIGINAL BILL AND CROSS-BILL, AND AMENDED PETITION FOR REMOVAL EMBODY FEDERAL QUESTIONS UNDER CHAPTERS 85 AND 89, NEW TITLE 28, OF THE NEW REVISED

JUDICIAL CODE, SPECIFICALLY SECTIONS 1343, 1441 and 1443?

THE DISTRICT COURT COMPLETELY IGNORED THE APPLICABILITY OF THESE SECTIONS, BUT IN EFFECT DENIED THEIR APPLICABILITY BY HIS ORDER TO REMAND.

APPELLANTS BELIEVE THAT JURISDICTION WAS EASILY ESTABLISHED BY THE ELABORATION OF FACTS.

QUESTION IV

CAN FIRST AMENDMENT RIGHTS TO DEMONSTRATE FOR CIVIL RIGHTS AND FOR EQUAL PROTECTION UNDER THE LAWS BE ABRIDGED IN A STATE COURT BY INJUNCTIVE PROCESS, AND THE VICTIMS BE DENIED THE RELIEF OF REMOVAL FROM THE STATE TO THE DISTRICT COURT?

THE LOWER COURT IN THIS INSTANCE ANSWERED "YES".

APPELLANTS CONTEND IT SHOULD HAVE ANSWERED "NO".

QUESTION V

CAN ONE RACE TO THE DETRIMENT OF ANOTHER ENGAGE IN "GOVERNMENT BY INJUNCTION" TO PREVENT BOTH USE OF A PUBLIC ACCOMMODATION, A COIN OPERATED LAUNDRY FACILITY, BY CITIZENS OF THE UNITED STATES ON ACCOUNT OF THEIR SKIN COLOR, AND ALSO PROHIBIT THE PUBLIC PROTEST BY DEMONSTRATION, AND SAID CITIZENS FIND NO RELIEF IN A COURT OF THE UNITED STATES?

THE DISTRICT COURT IN EFFECT SAYS THEY CAN.

APPELLANTS CONTENDS THE ANSWER SHOULD BE "NO".

QUESTION VI

HAVE APPELLANTS THE RIGHT TO SEEK INJUNCTIVE RELIEF OF THEIR OWN BY WAY OF A CROSS-BILL, AS FILED WITH THEIR ANSWER IN THIS CASE, UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, BASED ON THE LOCATION OF COMPLAINANTS' COIN LAUNDRY FACILITY IN A FEDERALLY FINANCED RE-DEVELOPMENT AREA, IN WHICH GOVERNMENTAL CONTROLS AND REGULATIONS ARE EXERCISED IN THE FUTURE USE OF THE PROPERTY?

THE DISTRICT COURT IN EFFECT DENIES THIS RIGHT TO AFFIRMATIVE RELIEF BY ITS ORDER TO REMAND.

APPELLANTS INSIST ON THEIR RIGHT TO THIS RELIEF.

QUESTION VII

DO APPELLANTS HAVE A RIGHT OF PEACEABLE ASSEMBLY IN FRONT OF A PUBLIC BUSINESS, PRIVATELY OWNED BUT LICENSED TO SERVE THE PUBLIC BY STATE, COUNTY, AND CITY, FOR THE PURPOSE OF PROTESTING AGAINST RACIAL DISCRIMINATION?

THE DISTRICT COURT IN EFFECT SAYS "NO".

APPELLANTS SAY "YES".

QUESTION VIII

DO APPELLANTS HAVE A RIGHT TO INFORM THE PUBLIC BY PEACEABLE MEANS OF THE PRACTICES OF RACIAL BIAS AND DISCRIMINATION AGAINST HIM, OR TO ABRIDGE THEIR FREEDOM OF

SPEECH UNDER THE FIRST AMENDMENT?

THE DISTRICT COURT IN EFFECT SAYS "NO".

APPELLANTS SAY "YES".

QUESTION IX

DO APPELLANTS HAVE A RIGHT AS CITIZENS OF THE UNITED STATES TO ENTER UPON THE PREMISES OF COMPLAINANTS FOR THE PURPOSE OF PAYING TO USE THEIR FACILITIES FOR WASHING CLOTHES, AS THEY ARE LICENSED TO PROVIDE FOR THE PUBLIC?

THE DISTRICT COURT IN EFFECT SAYS "NO".

APPELLANTS SAY "YES".

QUESTION X

UNDER THE FOURTEENTH AMENDMENT CAN A GOVERNMENTAL BODY CONVEY WITH A LICENSE TO DO BUSINESS WITH THE GENERAL PUBLIC THE RIGHT TO DISCRIMINATE AGAINST PATRONS OF THE BUSINESS ON ACCOUNT OF RACE OR COLOR, WHICH IS FORBIDDEN TO THE STATE OR ANY GOVERNMENTAL BODY?

THE DISTRICT COURT IN EFFECT SAYS "YES".

APPELLANTS SAY "NO".

QUESTION XI

CAN A STATE THROUGH ITS LICENSING PRACTICE FOR THE PRIVILEGE OF OPERATING BUSINESSES ABRIDGE THE PRIVILEGES AND IMMUNITIES OF THE CITIZENS OF THE UNITED STATES, OR

DENY THE CITIZENS SEEKING TO PATRONIZE SAID BUSINESSES EQUAL PROTECTION UNDER THE LAWS?

THE DISTRICT COURT IN EFFECT SAYS "YES".

APPELLANTS SAY "NO".

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NO. 15,616

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOE E. YOUNG and WILLIE H. MABREY,

Plaintiffs-Appellees,

v.

MRS. NELSON I. STEPHENS,
Individually and as Chairman of
Congress of Racial Equality,

Defendants-Appellants.

Appealed from the
United States District Court
For the Eastern District of Tennessee
Northern Division
Civil Action No. 4772

MAIN BRIEF ON BEHALF OF DEFENDANTS-APPELLANTS

WITH APPENDIX

I

Facts should be set forth in more detail

STATEMENT OF FACTS

Complainants operated a licensed self-service coin-operated laundry in the City of Oak Ridge, Tennessee, on land acquired and developed for defense purposes by the United States. These appellants, mostly Negroes but with some Caucasion friends, sought to use these public facilities, and were forcibly ejected. (See Original Bill and Answer, appendix pages 6a and 10a).

Appellants in protest of their forcible ejection picketed the laundry in peaceful and lawful manner, carrying placards for the information and edification of the general public. (See Answer, Section II, appendix page 10a).

Original Bill alleges a "conspiracy" and desire to put them out of business, and blocking of customers from entering the business. This is denied by appellants. But the "conspiring" and "blocking" are not the real issues of this case. Is it "conspiring" for Caucasians to agree to assemble some clothes to take out to be washed? Is it "conspiring" to agree to picket and carry placards in behalf of civil rights? (See Original Bill, Prayer, appendix page 8a).

The City of Oak Ridge and outlying areas comprised a project of the United States, in which the government acquired title to the land, a government-financed

re-development area. Various controls and regulations exist, even after the sale of considerable portions of the land in this area, in order to fulfill the public purposes for which the project was originally designed. (See Answer, Section IV, appendix page 11a).

On July 27, 1963 eight members of CORE, the appellants, were engaged in washing their clothes at this facility, when complainant Young and an assistant carried all of them forcibly off the premises, either "roughly yanked and dragged" or "carried gently". (See Answer, Section VI, appendix page 12a).

———*———

II

ARGUMENT

QUESTION I

THE PRINCIPAL QUESTION INVOLVED IS THAT OF JURISDICTION OF THE UNITED STATES DISTRICT COURT TO REMOVE FROM STATE COURT OF CHANCERY.

THE DISTRICT COURT ANSWERED "NO".

APPELLANTS CONTEND IT SHOULD BE ANSWERED "YES".

The law for removal of cases from state court to federal court is plain and clear in the Revised Judicial Code as enacted by the Congress June 25, 1948 -- New Title 28, USC, Chapters 85 and 89.

Section 1343, Chapter 85, provides original jurisdiction in the federal court by any person to redress the deprivation (under color of law, law, custom or usage) of any right, privilege, or immunity secured by the Constitution of the United States.

Section 1441, Chapter 89, elaborates on the jurisdiction specifically for removal. "Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution .. .. shall be removable ...".

The right of demonstration against racial discrimination is a legitimate exercise of First Amendment rights -- a right rooted in the American history or protest, in the movement for the abolition of slavery, the securing of voting rights for women, the protests of jobless veterans, the protests of farmers against foreclosures, the protests against the traffic in alcoholic beverages, the protests of labor against the suppressions of their rights to organize.

Even if the protests of these appellants against racial bias were elsewhere than in Oak Ridge, the use of the arm of the state, the court of chancery, to suppress them creates a federal question, properly removable under federal law to the district court.

———*———

QUESTION II

PETITION FOR REMOVAL ALLEGES DIVERSITY OF CITIZENSHIP AND AFFIDAVIT OF PREJUDICE AND LOCAL INFLUENCE. THE DISTRICT COURT HELD THAT THESE WERE INADEQUATE GROUNDS FOR REMOVAL. APPELLANTS IN THEIR BRIEF TO THE LOWER COURT CONCEDED THIS. THEY OFFERED IN THEIR BRIEF TO REMEDY THEIR PETITION BY FILING AN AMENDED PETITION, WHICH THEY DID ON THE SAME DATE AS THE COURT ORDERED TO BE REMANDED, AND SAME WAS MARKED "LODGED" BY THE CLERK ON THE NEXT DAY, AND SAME IS A PART OF THE TECHNICAL RECORD.

The allegations of diversity of citizenship and of prejudice and local influences were surplusages, doing no harm to the allegation of the federal questions involved in the deprivation of rights under the Constitution.

Appellants consider it curious that the court in his order to remand dealt only with these allegations, ignoring the federal questions, even though it was stated in the brief furnished the district court that appellants did not rely on these surplusages.

The petition for removal was prepared in haste, with the intention of creating a dragnet, which is a human error in legal pleadings, but the first paragraph of the removal petition states simply and succinctly that the

matters in controversy involve and embody the civil rights of defendants (appellants) under the United States Constitution, the First, Fifth and Fourteenth Amendments, and the deprivation of such rights and equal protection by the injunctive processes of the state court. (See Petition for Removal, first paragraph, appendix page 3a).

The federal question is amply elaborated in answer and cross-bill, filed simultaneously with the Petition for Removal, and the Amended Petition for Removal, "lodged" with the Clerk of the court on the same date as the order to remand.

———*———

QUESTION III

DO THE ALLEGATION OF FACTS EMBODIED IN THE PETITION FOR REMOVAL, THE ANSWER TO ORIGINAL BILL AND CROSS-BILL, AND AMENDED PETITION FOR REMOVAL EMBODY FEDERAL QUESTIONS UNDER CHAPTERS 85 AND 89, NEW TITLE 28, OF THE NEW REVISED JUDICIAL CODE, SPECIFICALLY SECTIONS 1343, 1441 AND 1443?

THE DISTRICT COURT COMPLETELY IGNORED THE APPLICABILITY OF THESE SECTIONS, BUT IN EFFECT DENIED THEIR APPLICABILITY BY HIS ORDER TO REMAND.

APPELLANTS BELIEVE THAT JURISDICTION WAS EASILY ESTABLISHED BY THE ELABORATION OF FACTS.

Appellants do not know why the district court would cite cases to justify his order to remand, based only on the question of diversity of citizenship and local prejudice, which appellants specifically disclaimed in their brief as any part of their right of jurisdiction. The federal questions and constitutional rights of parties were not referred to, and evidently not considered, for reasons unknown to them. (See Order of the Court, appendix pages 16a, 17a).

———*———

QUESTION IV

CAN FIRST AMENDMENT RIGHTS TO DEMONSTRATE FOR CIVIL RIGHTS AND FOR EQUAL PROTECTION UNDER THE LAWS BE ABRIDGED IN A STATE COURT BY INJUNCTIVE PROCESS, AND THE VICTIMS BE DENIED THE RELIEF OF REMOVAL FROM THE STATE TO THE DISTRICT COURT?

THE LOWER COURT IN THIS INSTANCE ANSWERED "YES". APPELLANTS CONTEND IT SHOULD HAVE ANSWERED "NO".

Original Bill of appellees complains of demonstrations for civil rights in front of their place of business, but in their prayer for relief they enjoin appellants from coming on their property, although they are licensed by state, county, and city to do business with the general public. They ask also for additional and general relief. (See Original Bill, Prayer, appendix page 8a).

The attack on the right to demonstrate against racial bias is cloaked in the prayer of Original Bill as a prohibition against interference with customers, "or doing anything towards injuring complainants' business."

It is a constitutional right of appellants to seek to hurt their business or patronage by peaceable and

non-violent means, as a protest against racial discrimination. It is the constitutional right of appellants to avail themselves of the use and benefit of services and facilities licensed by the state, county, and city as a privilege of doing business with the public.

To deny them these constitutional rights constitutes a deprivation of privileges and immunities secured by the Constitution, and of vital concern to the federal court, for which they are vouchsafed the jurisdiction of that court for full hearing.

———*———

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QUESTION V

CAN ONE RACE TO THE DETRIMENT OF ANOTHER ENGAGE IN "GOVERNMENT BY INJUNCTION" TO PREVENT BOTH USE OF A PUBLIC ACCOMMODATION, A COIN OPERATED LAUNDRY FACILITY, BY CITIZENS OF THE UNITED STATES ON ACCOUNT OF THEIR SKIN COLOR, AND ALSO PROHIBIT THE PUBLIC PROTEST BY DEMONSTRATION, AND SAID CITIZENS FIND NO RELIEF IN A COURT OF THE UNITED STATES?

THE DISTRICT COURT IN EFFECT SAYS THEY CAN.

APPELLANTS CONTENDS THE ANSWER SHOULD BE "NO".

The prohibition of these appellants, on account of race or color or friendship for Negroes, from the use of licensed facilities is tantamount to government by injunction. It is not an enforcement of a law, but of a color of law, a practice, custom, or usage, from which they are vouchsafed protection by the Fourteenth Amendment, by an arm of the state, the statutory and constitutional state court of chancery. Such government by injunction denies Negroes equal protection under the laws.

———*———

QUESTION VI

HAVE APPELLANTS THE RIGHT TO SEEK INJUNCTIVE RELIEF OF THEIR OWN BY WAY OF A CROSS-BILL, AS FILED WITH THEIR ANSWER IN THIS CASE, UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, BASED ON THE LOCATION OF COMPLAINANTS' COIN LAUNDRY FACILITY IN A FEDERALLY FINANCED RE-DEVELOPMENT AREA, IN WHICH GOVERNMENTAL CONTROLS AND REGULATIONS ARE EXERCISED IN THE FUTURE USE OF THE PROPERTY?

THE DISTRICT COURT IN EFFECT DENIES THIS RIGHT TO AFFIRMATIVE RELIEF BY ITS ORDER TO REMAND.

APPELLANTS INSIST ON THEIR RIGHT TO THIS RELIEF.

Chapter 89, Section 1441, of the Code provides jurisdiction for removal of all cases for which the district court would have original jurisdiction "founded on a claim or right arising under the Constitution ...."

Not only would the subject matter of this litigation have been within the court's jurisdiction by removal, but cross-bill of appellants incorporated in their Answer to Original Bill and filed simultaneously with the Petition for Removal states clear grounds of jurisdiction. Both Cross-Bill and Answer contain elaboration of federal

questions involved. Since it is proper to consider Original Bill with the Petition for Removal, it is also proper to consider the Answer. (See Answer and Cross-Bill, Sections V, VI and VII, appendix pages 12a, 13a).

The Cross-Bill sets out a federal question, in seeking affirmative relief, since it specifically relies on another federal court case in which the facts and conclusions are substantially identical.

We refer to the decision of Judge William E. Miller in Smith v. Holiday Inns of America, Inc., (D.C. M.D. Tenn.), decided July 30, 1963. This case held that when pervasive forms of governmental participation in an urban re-development project and continuing governmental controls over the future use of the property is reserved to the city housing authority, the state had become involved to such a significant extent that owner of motel "....(was) subject to the Equal Protection Clause of the Fourteenth Amendment."

Substantially the same situation is involved here. The entire Oak Ridge area was purchased by the United States for the benefit and use of the people of the United States, controlled by the Department of the Army for defense, and subsequently sold in portions to private persons subject to regulations and controls of the United States.

If we have not postulated federal questions, subject to the jurisdiction of the district court, based on the retention of controls by the United States, then Judge William E. Miller has erred more grievously by making the retention of controls and supervision by a city housing authority more important by being subject to his jurisdiction.

The Fourteenth Amendment was intended to be an extension of the rights, privileges, and immunities of citizens through the states, not an abrogation of rights deriving directly from the United States.

In substance the United States is a party defendant in this litigation, in that the injunction in the state court seeks to abrogate their control and regulation, and to enlist the United States as a partner in the abridging of rights and immunities of citizens. And our district courts orders it to be remanded, for lack of jurisdiction!

———*———

QUESTION VII

DO APPELLANTS HAVE A RIGHT OF PEACEABLE ASSEMBLY IN FRONT OF A PUBLIC BUSINESS, PRIVATELY OWNED BUT LICENSED TO SERVE THE PUBLIC BY STATE, COUNTY, AND CITY, FOR THE PURPOSE OF PROTESTING AGAINST RACIAL DISCRIMINATION?

THE DISTRICT COURT IN EFFECT SAYS "NO".

APPELLANTS SAY "YES".

We have previously dealt with the matter of demonstrations as a proper exercise of First Amendment rights. Not only are appellants prohibited through this government by injunction from using the facilities of a licensed business, but they are prohibited from "doing anything towards injuring complainants' business."

The whole purpose of their demonstrations is to inform the public of unAmerican practices engaged in by the owners so that unthinking patrons will pause to consider what they are doing, and will refrain from using their facilities. It is their intention and constitutional right to harm their business by peaceful, non-violent measures, in order to redress themselves of their rights.

They have no right to block or thwart the approach of any patron, but not a single patron has joined

appellees in seeking the protection of the court, or to allege any such hindrance. Any such interference or hindrance is amply denied in the Answer, but appellees seek only to prevent the injuring of their business. They could better accomplish this justifiable motive by abandoning racial discrimination and by acceding to the constitutional rights of the United States citizens.

———*———

QUESTION VIII

DO APPELLANTS HAVE A RIGHT TO INFORM THE PUBLIC BY PEACEABLE MEANS OF THE PRACTICES OF RACIAL BIAS AND DISCRIMINATION AGAINST HIM, OR TO ABRIDGE THEIR FREEDOM OF SPEECH UNDER THE FIRST AMENDMENT?

THE DISTRICT COURT IN EFFECT SAYS "NO".

APPELLANTS SAY "YES".

In our constitutional system the right to inform the public by peaceable means, even to the harm of those who infringe on their rights, of practice of racial discrimination against them is a matter of fundamental importance.

It is to be hoped that no disorders result from such demonstrations, but they are usually caused by those who want them prevented from demonstrating, and who want their rights as citizens abridged. But the right to use the public facility though privately owned, and the right to demonstrate against the infringement of their rights may not be suppressed on account of the risk of disorder. The police power may be invoked to prevent a riot, but it is the primary duty of police to protect peaceful demonstrations.

———*———

QUESTIONS IX, X AND XI

QUESTION IX

DO APPELLANTS HAVE A RIGHT AS CITIZENS OF THE UNITED STATES TO ENTER UPON THE PREMISES OF COMPLAINANTS FOR THE PURPOSE OF PAYING TO USE THEIR FACILITIES FOR WASHING CLOTHES, AS THEY ARE LICENSED TO PROVIDE FOR THE PUBLIC?

THE DISTRICT COURT IN EFFECT SAYS "NO".

APPELLANTS SAY "YES".

QUESTION X

UNDER THE FOURTEENTH AMENDMENT CAN A GOVERNMENTAL BODY CONVEY WITH A LICENSE TO DO BUSINESS WITH THE GENERAL PUBLIC THE RIGHT TO DISCRIMINATE AGAINST PATRONS OF THE BUSINESS ON ACCOUNT OF RACE OR COLOR, WHICH IS FORBIDDEN TO THE STATE OR ANY GOVERNMENTAL BODY?

THE DISTRICT COURT IN EFFECT SAYS "YES".

APPELLANTS SAY "NO".

QUESTION XI

CAN A STATE THROUGH ITS LICENSING PRACTICE FOR THE PRIVILEGE OF OPERATING BUSINESSES ABRIDGE THE PRIVILEGES AND IMMUNITIES OF THE CITIZENS OF THE UNITED STATES, OR DENY THE CITIZENS SEEKING TO PATRONIZE SAID BUSINESSES EQUAL PROTECTION UNDER THE LAWS?

THE DISTRICT COURT IN EFFECT SAYS "YES".

APPELLANTS SAY "NO".

The right of appellants to use facilities licensed for business with the general public is a matter presently before the Supreme Court. It is amply but carefully dealt with by Mr. Justice Douglas in a separate but concurring opinion in the case of Garner v. Louisiana, 368 U.S. 157, 7 L. Ed. 2d 207, 82 S. Ct. 248; in Lombard v. Louisiana, 83 S. Ct. 1122; and Peterson v. Greenville, 83 S. Ct. 1133. It has not been decided by the entire court.

We feel that it is unnecessary to review the reasoning of Mr. Justice Douglas, nor of the first Mr. Justice Harlan in Civil Rights Cases of 1883, 109 U.S. 1.

We think the location of the coin-operated laundry facility in the Oak Ridge area, a federally financed re-development area, brings it into the scope of the decision of Judge Miller in Smith v. Holiday Inns, supra, so that further analysis would be unnecessary.

———*———

III

CONCLUSION AND SUMMARY

In Col. Anti-Discrimination Com. v. Continental Air Lines, (April 22, 1963), 83 S. Ct. 1022, the Supreme Court held that any state or federal law requiring applicants for any job to be turned away because of their color is invalid under the due process clause of the Fifth Amendment and the due process and equal protection clauses of the Fourteenth Amendment. The use of a state court of Chancery to prohibit the use of a publicly licensed facility on account of color or race equally denies due process and equal protection. Otherwise the whole purposes of our constitutional form of government and protection of the immunities of citizenship will be defeated by "government by injunction".

In Wright, et al, v. State of Georgia, (May 20, 1963), 83 S. Ct. 1240, the Supreme Court held that one cannot be punished for failing to obey command of police officer, given with intent to enforce racial discrimination in a city-owned park, since it denies Equal Protection under the law. Is a state court so sancrosanct that it is entitled to do what the police officer could not do, specifically deny Equal Protection under the law on account of race or color?

In Watson, et al, v. City of Memphis, (May 27,

1963), 83 S. Ct. 1314, the Supreme Court held that basic guarantees of the Federal Constitution are warrants for the present, and unless there is an overwhelmingly compelling reason, they are to be promptly fulfilled. And constitutional rights may not be denied simply because of hostility to their assertion or exercise.

In Adams v. City of Park Ridge, (Illinois 1961), 293 Fed. 2d 583, the Court of Appeals held that district court has jurisdiction of action against municipality brought to redress deprivation of constitutional rights without showing that minimal jurisdictional amount was involved.

In Gully v. First National Bank, 299 U. S. 109, 81 L. Ed. 70, in which removal based on "federal question" was rejected, Mr. Justice Cardozo enunciated the principle: "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. The rights or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another." This principle we submit is clear and unequivocal.

And even more clear as to jurisdiction in the matter of civil rights is the Tennessee Apportionment case,

Baker v. Carr, 369 U.S. 186, 7 L. Ed. 2d 663, 82 S. Ct. 691, decided March 26, 1962.

Mr. Justice Brennan held that the district court's holding that it lacked jurisdiction of the subject matter was error.

> "We said in an earlier voting case from Tennessee: 'It is obvious ... that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the federal right. But as the very nature of the controversy was federal, and therefore, jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient grounds for deciding that action was not one arising under the Constitution and laws of the United States' (citing Swafford v. Templeton.) 'For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction.' (Citing Bell v. Hood)
>
> "Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art. 3, Section 2, and so within the power of Congress to assign to the jurisdiction of the district courts. Congress has exercised that power in 28 USC Section 1343(3)."

Mr. Justice Brennan further says:

> "No consideration of merits of a claim other than a determination of whether an asserted federal constitutional claim is unsubstantial and frivolous is relevant to a determination of a federal court's jurisdiction of subject matter of cause of action for redress of a federal constitutional right."

We deem further comment would be gilding the lily.

IV

RELIEF

In view of the foregoing we respectfully pray for the distinguished Court of Appeals for the Sixth Circuit to reverse the order remanding to the State Chancery Court. In view of the vital importance of constitutional rights of parties, and the motion pending by appellants for the dissolution of injunction based on hearing on Bill and Answer, (see appendix, page 15a) we further respectfully pray that this action be taken here and now by the distinguished Court of Appeals for the Sixth Circuit.

Respectfully submitted,

MARTIN SOUTHERN

Attorney for Defendants-Appellants

SOUTHERN & SOUTHERN

Of Counsel

December 27, 1963

Appendix

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION

JOE E. YOUNG and WILLIE H. MABREY, Plaintiffs,	)	
vs.	)	Civil Action No. 4772
MRS. NELSON I. STEPHENS, Individually and as Chairman of Congress of Racial Equality Agents, servants, attorneys and all members, Defendants.	)	

———*———

STATEMENT OF RELEVANT DOCKET ENTRIES

Aug. 5, 1963 Petition for removal from Chancery Court of State of Tennessee for the County of Anderson, filed.

Aug. 5, 1963 Affidavit showing prejudice filed.

Aug. 5, 1963 Notice of motion to dissolve injunction filed. Copy served by attorney.

Aug. 5, 1963 Answer of defendants and cross bill filed.

Aug. 6, 1963 Exhibits filed by defendants and cross-complainants in support of their petition for removal, filed.

Aug. 23, 1963 Motion to remand filed. Copy served by attorney.

Aug. 26, 1963 Order denying defendant's petition for removal and remanding case to Chancery Court of Anderson County, Tennessee, entered in Civil Order Book 26, page 292, and filed. Copies to attorneys by Clerk.

Aug. 27, 1963 Motion to be allowed to file amended petition for removal, lodged. Notice to attorneys by Clerk.

Aug. 27, 1963 Amended petition for removal from Chancery Court of Anderson County, lodged.

Sept. 23, 1963 Notice of appeal filed. Copy mailed attorney by Clerk.

Sept. 23, 1963 Bond filed.

Sept. 27, 1963 Designation of contents of record on appeal filed. Copy served by attorney.

Oct. 25, 1963 Certified record on appeal mailed to U. S. Court of Appeals, Cincinnati, Ohio.

———*———

PETITION FOR REMOVAL FROM THE CHANCERY COURT OF STATE OF TENNESSEE, IN AND FOR THE COUNTY OF ANDERSON

(Filed August 5, 1963)

TO THE HONORABLE ROBERT L. TAYLOR, THE JUDGE OF THE UNITED STATES DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TENNESSEE:

Your petitioner, the above-named Mrs. Nelson I. Stephens, individually and as chairman of local affiliated organization known as Congress of Racial Equality, agents, servants, attorneys and all members, respectfully shows to the Honorable Court that Joe E. Young and Willie H. Mabrey, as complainants, have brought suit of a civil nature in Chancery of the State of Tennessee, in and for the County of Anderson, against your petitioner, Mrs. Nelson I. Stephens and Congress of Racial Equality of which she is local chairman, agents, servants, attorneys and all members, and that the matter or matters in controversy involve and embody the civil rights of defendants under the United States Constitution, the First and Fourteenth Amendments to said Constitution, and the deprivation of rights by the injunctive processes of said state court.

That the said controversy is between citizens of different states; that the complainants Joe E. Young and Willie H. Mabrey were at the time of the commencement of this suit and still are citizens of the State of Tennessee,

the state wherein such suit is pending, and are believed to reside at Oak Ridge, Tennessee; and that your petitioner, Mrs. Nelson I. Stephens, is also a resident of Tennessee, in Oak Ridge, Tennessee, but Congress of Racial Equality of which she is local affiliate chairman, was at the time of the commencement of this suit and still is a non-profit corporation organized and existing under and by virtue of the laws of the State of New York, and that most of the agents, servants, attorneys and members of said organization are also non-residents of the State of Tennessee; that your petitioner as Chairman of Congress of Racial Equality, for and in behalf of same, agents, servants, attorneys and members, desires to remove this suit which is now pending and undetermined in said state court, before the trial thereof, into the District Court of the United States to be held in the Eastern District of Tennessee.

Your petitioner further shows unto this Honorable Court that from prejudice and local influence in favor of the complainants and adverse to defendants, because of their campaigns in behalf of civil rights of a minority group, against bias, discrimination and segregation. that defendants will not be able to obtain justice in said state court or in any other state court to which said defendants may, under the laws of the state, have a right to remove said cause, on account of such prejudice or local influence.

Wherefore your petitioner prays that an order be entered for the removal of said case from the Chancery Court of said state to this court.

/s/ Mrs. Nelson I. Stephens
Petitioner

Southern & Southern,
Solicitors for Petitioners

By /s/ Martin Southern

STATE OF TENNESSEE

KNOX COUNTY

Mrs. Nelson I. Stephens, being duly sworn, on oath says that she is the petitioner above named; that she has read the foregoing petition, and that the same is true of her own knowledge, excepting as to matters which are therein stated to be alleged on information and belief, and as to those matters she believes them to be true.

/s/ Mrs. Nelson I. Stephens
Affiant

Subscribed and sworn to before
me this 3rd day of August, 1963.

/s/ Martin Southern
Notary Public

My commission expires July 11, 1966.

EXHIBITS FILED BY DEFENDANTS AND CROSS-COMPLAINANTS IN SUPPORT OF THEIR PETITION FOR REMOVAL

(Filed August 6, 1963)

ORIGINAL BILL

COMPLAINANTS WOULD RESPECTFULLY SHOW UNTO THE COURT:

That they own and operate a launderette doing business at 222 and 232 Jefferson Court, Oak Ridge, Anderson County, Tennessee. Said launderette is known as "Multi-Matic Laundry". Complainants would show that in the operation of their business that it is more or less a self-service laundry, that is, people bring their laundry in and use complainants' washing machines and driers, but first they must deposit coins, depending on the amount of laundry to be done. Also, complainants operate a dry cleaning system, which operates in the same manner. Complainants have invested many thousands of dollars in their building at the above described address, and in their equipment, machinery, etc.

That defendants, beginning Saturday, July 27, 1963, have entered into an illegal conspiracy to put your complainants out of business. In carrying out this illegal conspiracy the defendants on Saturday, July 27, on July 28th, 1963, and on this date, have picketed complainants' place of business, that is, these large groups will congregate in

front of complainants' business, will march along the front of complainants' business in such close proximity that it is impossible for complainants' customers to enter their establishment. The defendants carry cards, indicating that your complainants are unfair to colored people. They not only march in front of complainants' business, that is on public property, but come onto complainants' property and do part of their congregating, marching and picketing in complainants' parking area, and especially at complainants' entrances, thus by blocking the entrances and blocking the parking ways they are keeping complainants' customers from their establishment, as aforesaid. Some of the defendants have insisted upon coming into complainants' building, and on one occasion there was some skirmish there between one of complainants' employees and one of the defendants whose name is unknown because he was refused admittance. He did not pretend to come upon the property as a customer, but merely to use a telephone.

Your complainants aver that they do not have an adequate remedy at law to restrain the illegal activities of the defendants herein recited, and that unless defendants are enjoined from interferring with complainants' business they will be irreparably damaged.

PREMISES CONSIDERED, complainants, pray:

1. That process issue and be served upon Mrs.

Nelson I. Stephens, as chairman of CORE, and all other members, agents, servants and employees of CORE, and that they be required to answer this bill fully and truly, but not under oath, the oaths to their answers being waived.

2. That an injunction issue, forthwith, restraining the defendants, as aforesaid, from coming on the property of these complainants, or from in any wise interferring with the business of complainants, that is, interferring with their customers entering complainants' place of business, or doing anything towards injuring complainants' business, and upon the hearing said injunction be made permanent.

3. That if mistaken in their special prayer they have such other, further, additional and general relief as the facts may show them entitled upon the hearing of this cause.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

_____

_____

Solicitor for Complainants
ALLEN M. ELLIOTT
1516 Bank of Knoxville Bldg.,
Knoxville, Tennessee

STATE OF TENNESSEE

COUNTY OF KNOX

JOE E. YOUNG made oath in due form of law that he had read the foregoing bill, and that the statements made therein of his own knowledge were true, and those made upon information and belief he verily believes to be true.

_____

Sworn and subscribed to before me
this 29th day of July, 1963

_____
Notary Public

My commission expires July 21, 1965.

F I A T

TO THE CLERK AND MASTER:

File the foregoing bill and issue the injunction as sought therein, upon the complainants executing an injunction bond in the amount of $_____.

This 29th day of July, 1963.

_____
CHANCELLOR

ANSWER OF DEFENDANTS AND CROSS BILL

(Filed August 5, 1963)

Mrs. Nelson I. Stephens, individually and as Chairman of local affiliate of Congress of Racial Equality, and Winston Lockett, field worker, employee, and agent of Congress of Racial Equality, for answer in their own behalf, for Congress of Racial Equality, known as CORE, its agents, servants, attorneys, and members, to original bill filed against them in the Chancery Court of Anderson County, Tennessee, say:

I

That they admit the allegations of first paragraph of said original bill, except they have no knowledge of extent of complainants' investment in equipment.

II

That they deny entering into a conspiracy, legal or otherwise, to put complainants out of business, but admit they have picketed complainants' place of business in peaceful, lawful manner, carrying placards for the information and edification of the general public, such as: "This Laundromat is Segregated", "Make Oak Ridge An Open City", "Support Human Rights", "Segregation Hurts Oak Ridge and Harms America"; that they deny that they have blocked ingress and egress of customers; that they have no knowledge of any alleged skirmish involving an employee of complainants, and

discriminatory by State

demand proof of same; that they admit they have sought laundry service on premises of complainants' business, and have been ejected because of the dark color of skin with which nature endowed them, that they deny their activities have been illegal or in any degree improper, and that the only illegal activity has been that of complainants in their biased, discriminatory rejection of the patronage of Negro American citizens.

Licensed premises

III

That they would show the Court that business of complainants is licensed as a privilege by the State of Tennessee, County of Anderson, and municipal corporation of Oak Ridge, which have no right under the Fourteenth Amendment to the United States Constitution to practice racial discrimination, and no right to grant such a privilege to private enterprise licensed to do business with the general public; that said business of complainants is also subject to governmental health and sanitation regulations and periodic inspections, and subject to regulation by the zoning ordinances of the City of Oak Ridge.

U.S. entered as party

IV

That the City of Oak Ridge and outlying areas comprised a project of the United States government, in which said government acquired title to all the land in said area, that it is a government-financed re-development area,

and no business deriving title directly or indirectly, by purchase, lease or rental, may practice racial discrimination, under the equal protection clause of the Fourteenth Amendment of the United States Constitution, much less invoke and enlist the aid of a state court to enforce the practice of racial discrimination in the operation of their business; that the United States government retained certain rights and controls over future uses of this property, in order to fulfill the public purposes for which the project was originally designed; that owners, lesses and renters of property in the Oak Ridge area, deriving their title from the government, are bound by the equal protection clause prohibiting discrimination on the grounds of race or color.

V

Having answered all matters contained in said original bill that they are advised are material, and generally denying all matters not specifically admitted or denied, they are further advised that the facts hereinabove set out entitle them to assume the role of complainants.

VI

That in their role of cross-complainants, respondents aver that on Saturday evening July 27, 1963 eight members of CORE, including Mrs. Nelson I. Stephens, were engaged in washing their clothes at complainants' place of business, when complainant Young and an assistant carried

all of them forcibly off the premises, in violation of their rights, whether they were "roughly yanked and dragged" according to official CORE account, or "carried gently" according to the report of said Young to the Oak Ridger.

VII

The premises considered, cross-complainants respectfully pray:

1. That by the Court's order defendants be allowed to assume the role of cross-complainants against the original complainants, that the foregoing answer be treated as a cross-bill, and that cross-defendants be ordered to answer same.

2. That at the hearing of the case, on proof or bill and answer, that complainants be perpetually enjoined, inhibited, and restrained from the practice of racial discrimination in the Oak Ridge area, from interfering, prohibiting, molesting or threatening any patron of their business on account of race or color.

3. That they have such other and further relief as they may be entitled in law and equity.

This is the first application for extraordinary relief in this case, but same is not prayed until the hearing of the case, on proof or bill and answer.

Congress of Racial Equality

By /s/Mrs. Nelson I. Stephens
Defendant and cross-complainant

/s/ Mrs. Nelson I. Stephens
Defendant and cross-complainant

/s/ Mr. Winston Lockett
Defendant and Cross-complainant

Southern & Southern,
Solicitors for defendants
and Cross-complainants

By /s/ Martin Southern

STATE OF TENNESSEE

KNOX COUNTY

Mrs. Nelson I. Stephens and Winston Lockett, being duly sworn, on oath say that they are the defendants and cross-complainants above named, that they have read their foregoing answer and cross-bill, and that the same is true of their own knowledge, excepting as to matters which are therein stated to be alleged on information and belief, and as to those matters they believe them to be true.

Congress of Racial Equality

By /s/ Mrs. Nelson I. Stephens
Chairman

/s/ Mrs. Nelson I. Stephens

/s/ Mr. Winston Lockett

Subscribed and sworn to
before me this 3rd day of
August, 1963.

/s/ Martin Southern
Notary Public

My Commission Expires: 7-11-66.

NOTICE OF MOTION TO DISSOLVE INJUNCTION

(Filed August 5, 1963)

At _____ a.m., on the 16th day of August, 1963, or as soon thereafter as we may be heard in open court by Robert L. Taylor, Judge, in the courtroom of the United States District Court at Knoxville, Tennessee, we will move that the injunction in said cause be dissolved, which motion will be based on bill and answer.

This August 5, 1963.

/s/ Martin Southern
Solicitor for defendants

I have served copy of foregoing Notice of Motion and copy of answer to original bill on Honorable Allen Elliott, Solicitor for complainants on this August 5, 1963.

/s/ Martin Southern
Solicitor for defendants

O R D E R

(Filed August 26, 1963)

Before the Court for consideration is the petition of Mrs. Nelson I. Stephens, individually and as Chairman of a local affiliated organization known as the Congress of Racial Equality, agents, servants, attorneys and all members, to remove a suit to this court brought by Joe E. Young and Willie H. Mabrey against them in the Chancery Court of Anderson County.

Although the petition alleges that the controversy is between citizens of different states, the petition shows upon its face that the complainants in the state court are citizens of the State of Tennessee and that one of the defendants in the state court, Mrs. Nelson I. Stephens, is also a citizen of Tennessee. Consequently, diversity of citizenship does not exist.

Petitioners claim that they are entitled to remove because prejudice and local influence is in favor of the complainants and against the defendants in the Chancery Court. This is not a sufficient cause for removal. Lamson v. Superior Court of State of California in and for Santa Clara County, et al, (D.C.N.D. Cal., October 27, 1935), 12 F. Supp. 812; Snypp v. State of Ohio, (C.A. 6, 1934), 70 F. 2d 535. Statutes authorizing removal for a denial of equal rights are directed against state legislative and constitutional denial and not against individual and

judicial action which denies equal civil rights. People of State of California v. Lamson, (D.C.N.D. Cal. November 8, 1935), 12 F. Supp. 813.

The Court concludes that the petition must be denied. It is, therefore, ORDERED that the petition be, and same hereby is, denied.

It is further ORDERED that the case be, and same hereby is, remanded to the Chancery Court of Anderson County, Tennessee.

Enter:

/s/ Robert L. Taylor
United States District Judge

AMENDED PETITION FOR REMOVAL FROM
THE CHANCERY COURT OF STATE OF TENNESSEE
IN AND FOR THE COUNTY OF ANDERSON

(Filed August 27, 1963)

TO THE HONORABLE ROBERT L. TAYLOR, THE JUDGE OF THE UNITED STATES DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF TENNESSEE:

Your petitioner, the above-named Mrs. Nelson I. Stephens, individually and as chairman of local affiliated organization known as Congress of Racial Equality, agents, servants, attorneys, and all members, respectfully shows to the Honorable Court that Joe E. Young and Willie H. Mabrey, as complainants, have brought suit of a civil nature in Chancery Court of the State of Tennessee, in and for the County of Anderson, against your petitioner, Mrs. Nelson I. Stephens and Congress of Racial Equality of which she is local chairman, agents, servants, attorneys and all members, and that the matter or matters in controversy involve and embody the civil rights of defendants under the United States Constitution, the First and Fourteenth Amendments to said Constitution, and the deprivation of rights and equal protection under the law by the injunctive processes of said state court.

Petitioner would show that complainants tried to disguise their assault on the civil rights of defendants by

alleging "an illegal conspiracy to put your complainants out of business," but in their prayer for relief they seek not to enjoin any "illegal conspiring", picketing or marching, to seek to enjoin them "from coming on the property of these complainants," trying by subterfuge to conceal the plain and simple fact that defendants are of the negro race, that complainants seek illegally to use the injunctive process of the state court to prevent defendants from using the laundering facilities complainants are licensed to provide the public, thus denying them equal protection under the law.

Petitioner would further show that original bill of complainants complain because defendants carry cards "indicating that your complainants are unfair to colored people", which they do not deny because it is true; that they complain because a defendant came on their property to use a telephone, infering a gross presumption no doubt on account of the color of his skin.

Petitioner would show that there is scant connection between the allegations of original bill and prayer for relief, but it is amply clear from the allegations of the original bill and more fully shown in the answer and cross-bill of defendants that this case originated out of and from the determination of complainants to practice racial discrimination, to deny all Negroes the right to use

their facilities, that in protest of this illegal practice Negro defendants march in front of the business carrying informative placards; that their marching was in the exercise of their right of peaceable assembly vouchsafed them by the First Amendment to the Constitution; that their carrying placards to inform the public was in the exercise of their right of free speech under the same Amendment.

Petitioner would further show that the use of the injunctive process of the state court constitutes a denial of equal protection under the law as vouchsafed them under the Fourteenth Amendment to the Constitution.

Petitioner would further show that Oak Ridge is a federally financed re-development area, and that under recent decision in case of Smith vs. Holiday Inn, the defendants come under the equal protection clause of the Fourteenth Amendment, so that complainants may not prohibit the use of their facilities by defendants or their coming on the premises, either by their command or the implementation of the injunctive process of the state court.

Your petitioner further shows unto this Honorable Court that from prejudice and local influence in favor of the complainants and adverse to defendants, because of their campaigns in behalf of civil rights of a minority group, against bias, discrimination and segregation, that defendants will not be able to obtain justice in said state

court or in any other state court to which said defendants may, under the laws of the state, have a right to remove said cause, on account of such prejudice or local influence.

Wherefore your petitioner prays that an order be entered for the removal of said case from the Chancery Court of said State to this Court.

_____
PETITIONER

SOUTHERN & SOUTHERN
SOLICITORS FOR PETITIONERS

BY /s/ Martin Southern

STATE OF TENNESSEE

KNOX COUNTY

Mrs. Nelson I. Stephens, being duly sworn, on oath says that she is the petitioner above named; that she has read the foregoing petition, and that the same is true of her own knowledge, excepting as to matters which are therein stated to be alleged on information and belief, and as to those matters she believes them to be true.

/s/ Mrs. N. I. Stephens
Affiant

Subscribed and sworn to before me this 26th day of August, 1963.

/s/ Martin Southern
NOTARY PUBLIC

My commission expires July 11, 1966.

CERTIFICATION

I certify that I have delivered a true and exact copy of the foregoing Amended Petition For Removal to the office of the Honorable Allen Elliott, Solicitor For Complainants, at Bank of Knoxville Building, Knoxville, Tennessee, this August ____, 1963.

SOLICITOR FOR DEFENDANTS

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOE E. YOUNG AND WILLIE H. MABREY

COMPLAINANTS-APPELLEES

VS

NO. 15616

MRS. NELSON I. STEPHENS,

Individually and as Chairman of
Congress Of Racial Equality, etc.

DEFENDANTS-APPELLANTS

ACKNOWLEDGMENT OF SERVICE

I, Allen M. Elliott, Soliciter for Complainants-Appellees, acknowledge service on me by Martin Southern of copy of brief filed in the United States Court of Appeals For the Fifth Circuit (No. 20960) Town of Clinton And Parish of East Feliciana V. Congress Of Racial Equality, said brief being the same as referred to in Motion of Defendants-Appellants for Leave To File Exhibit.

This February 20, 1964.

Solicitor For Complainants-Appellees

THE FOLLOWING DOCUMENTS ARE THE

BEST AVAILABLE.

July 31, 19[illegible]

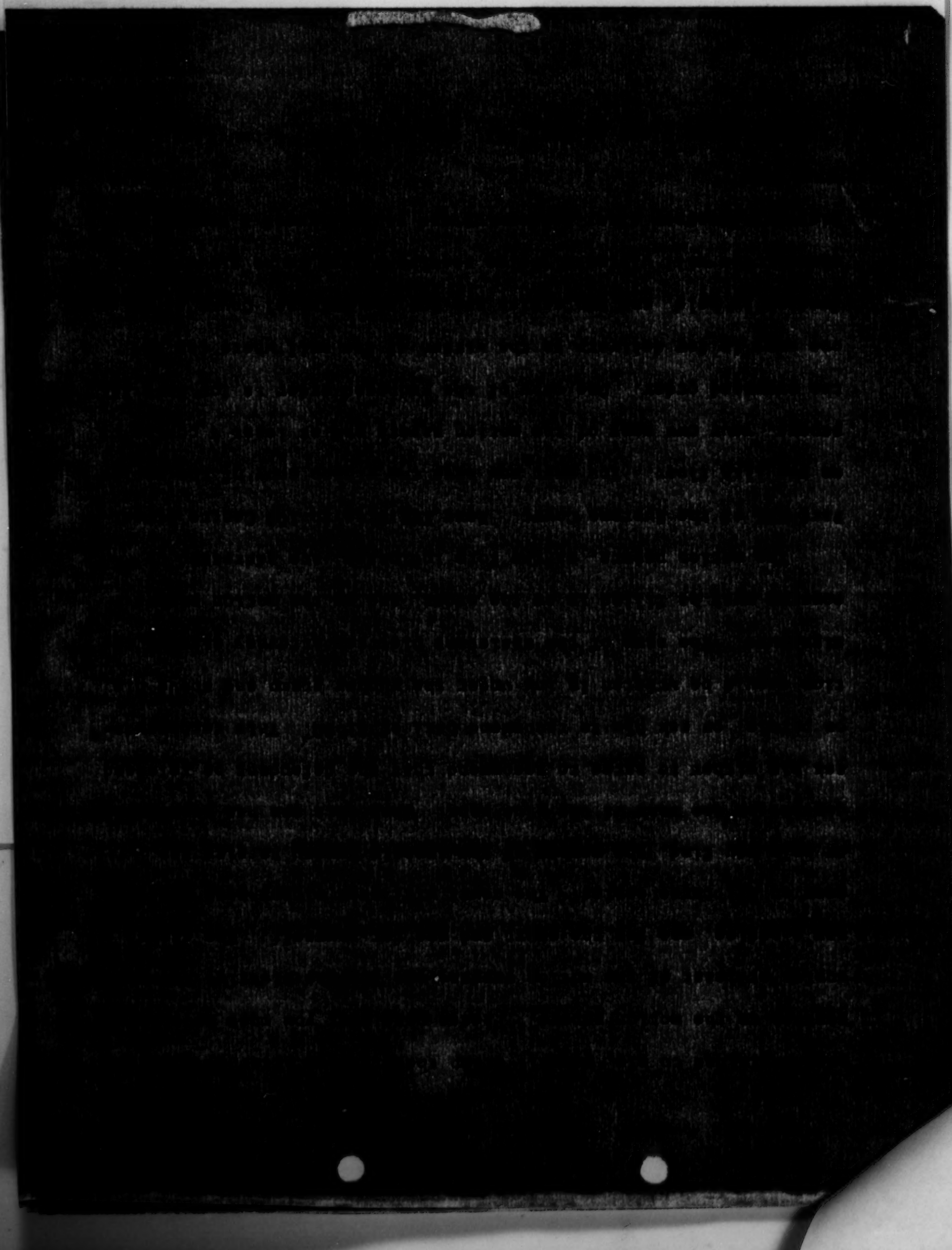
MEMORANDUM

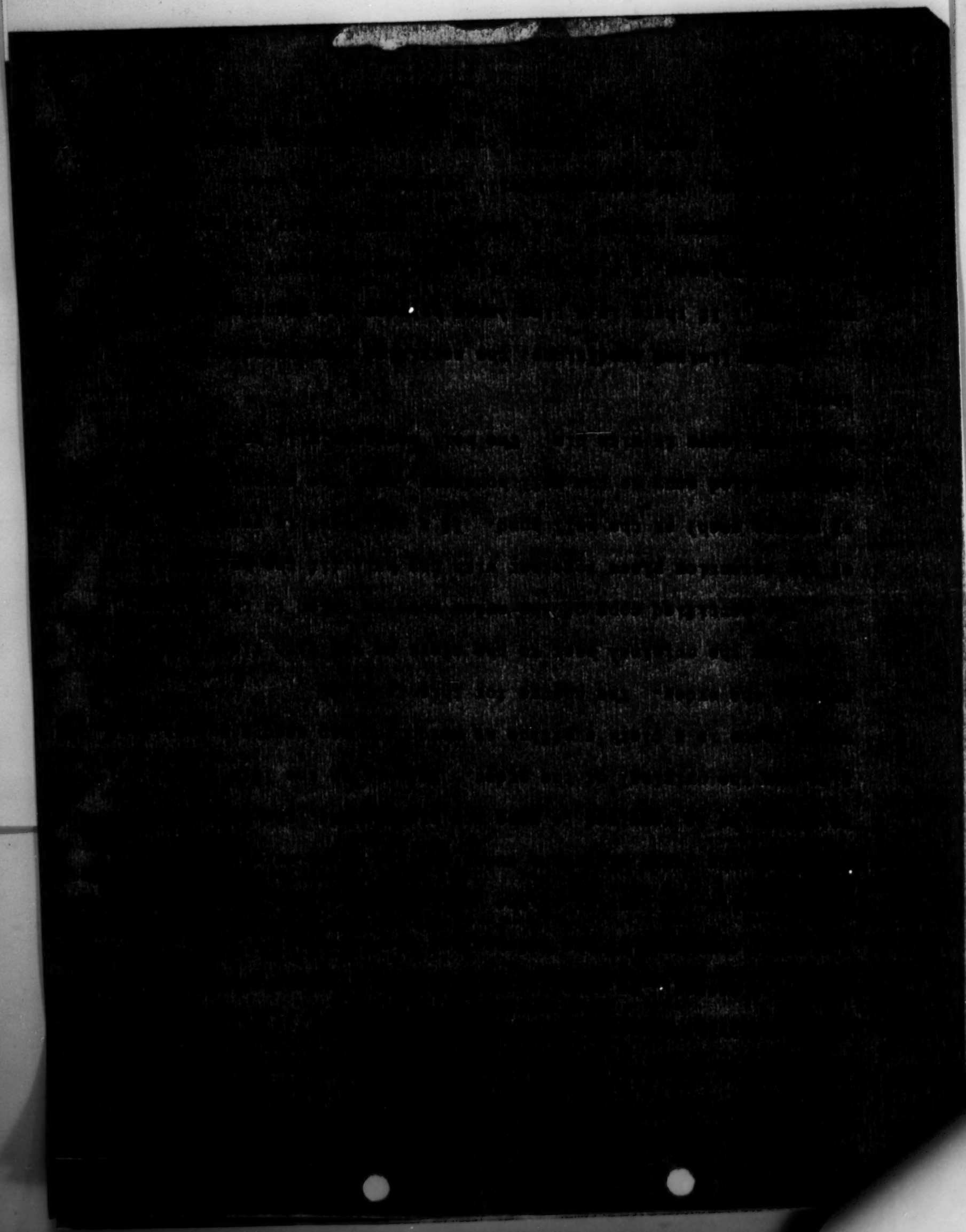
Re: OBTAINING RELEASE OF THE DEFENDANT FROM JAIL PENDING APPEAL

This memorandum is written as an elementary guide for [illegible] who, like myself, have no experience in criminal procedure and suddenly find themselves called upon to take emergency action for a client.

The relevant statutes are the Penal Law containing most of substantive Penal Law of New York and the Code of Criminal [illegible] which contains most of the basic procedural law, but [illegible] to be read with the acts under which specific counts are [illegible].

[illegible] of McKinney contains some of these. The [illegible] Criminal Court Act, however, is of this point only in [illegible] Penalty Laws. The Court's Rules are a paperback [illegible] published by McKinney's. Effectively this Court's [illegible] are in Volume 22-C of McKinney's. Rules of [illegible]





SUBPOENA TO ANSWER AT RULES

State Of Tennessee, Chancery Court At Clinton

TO THE SHERIFF OF ANDERSON COUNTY, GREETING:

Summon Mrs. Nelson I. Stephens, as Chairman of CORE, and all others members, agents, servants and employees of CORE,

to appear in person or by attorney before the Chancery Court at Clinton, Tennessee, on or before the 5 day of Aug., 1963, next, it being the 1st Monday in Aug. to answer the **Original** Bill which Joe E. Young and Willie H. Mabrey has filed in said Court against you and have you then and there this writ.

Witness J. E. Lawson, Clerk and Master of said Court, at Office in Clinton, Tennessee this 29 day of July, 1963.

J. E. Lawson
Clerk and Master

By Susie Davis
Deputy Clerk and Master.

NOTICE

To the Above Named Defendant Mrs. Nelson I Stephens et al

You are hereby notified that you are required to make defense in this case on or before the 1st Monday of Au., or judgment pro confesso will be entered against you on the 3rd Monday of Aug., 1963.

J. E. Lawson
Clerk and Master

By _____
Deputy Clerk and Master.

TO THE HONORABLE A. G. SHUMATE, CHANCELLOR,

HOLDING THE CHANCERY COURT FOR ANDERSON COUNTY, TENNESSEE

JOE E. YOUNG and WILLIE H. MABREY Complainants v. MRS. NELSON I. STEPHENS, individually, and as Chairman of an organization described as CORE, agents, servants, attorneys and all members of said organization, and other parties whose names are unknown but who are members of the conspiracy herein described Defendants	)

126 Bethyne Combs Rd. Valley

ORIGINAL BILL

COMPLAINANTS WOULD RESPECTFULLY SHOW UNTO THE COURT:

That they own and operate a launderette doing business at 222 and 232 Jefferson Court, Oak Ridge, Anderson County, Tennessee. Said launderette is known as "Multi-Matic Laundry". Complainants would show that in the operation of their business that it is more or less a self-service laundry, that is, people bring their laundry in and use complainants' washing machines and driers, but first they must deposit coins, depending on the amount of laundry to be done. Also, complainants operate a dry cleaning system, which operates in the same manner. Complainants have invested many thousands of dollars in their building at the above described address, and in their equipment, machinery, etc.

The defendants, beginning Saturday, July 27, 1963, have entered into an illegal conspiracy to put your complainants out of business. In carrying out this illegal conspiracy the defendants on Saturday, July 27th, on July 28th, 1963, and on this date, have picketed complainants' place of business, that is, these large groups will congregate in front of complainants' business, will march along the front of complainants' business in such close proximity that it is impossible for complainants' customers to enter their establishment. The defendants carry cards, indicating that your complainants are unfair to colored people. They not only march in front of complainants' business, that is on public property, but come onto complainants' property and do part of their congregating, marching and picketing in complainants' parking area, and especially at complainants' entrances, thus by blocking the entrances and blocking the parking ways they are keeping complainants' customers from their establishment, as aforesaid. Some of the defendants have insisted upon coming into complainants' building, and on one occasion there was some skirmish there between one of complainants' employees and one of the defendants whose name is unknown because he was refused admittance. He did not pretend to come upon the property as a customer, but merely to use a telephone.

Your complainants aver that they do not have an adequate remedy at law to restrain the illegal activities of the defendants herein recited, and that unless defendants are enjoined from interferring with complainants' business they will be irreparably damaged.

PREMISES CONSIDERED, Complainants pray;

1. That process issue and be served upon Mrs. Nelson I. Stephens, as Chairman of CORE, and all other members, agents, servants and employees of CORE, and that they be required to answer this bill fully and truly, but not under oath, the oaths to their answers being waived.

2. That an injunction issue, forthwith, restraining the defendants, as aforesaid, from coming on the property of these complainants, or from in any wise interferring with the business of complainants, that is, interferring with their customers entering complainants' place of business, or doing anything towards injuring complainants' business, and upon the hearing said injunction be made permanent.

3. That if mistaken in their special prayer they have such other, further, additional and general relief as the facts may show them entitled upon the hearing of this cause.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

_____

_____
Solicitor for Complainants
ALLEN M. ELLIOTT
1516 Bank of Knoxville Bldg.
Knoxville, Tennessee

STATE OF TENNESSEE
COUNTY OF KNOX

JOE E. YOUNG made oath in due form of law that he had read the foregoing bill, and that the statements made therein of his own knowledge were true, and those made upon information and belief he verily believes to be true.

_____

Sworn and subscribed to before me,
this 29th day of July, 1963.

_____
NOTARY PUBLIC

My commission expires: July 21, 1965.

FIAT

TO THE CLERK AND MASTER:

File the foregoing bill and issue the injunction as sought therein, upon the complainants executing an injunction bond in the amount of $_____.

This 29th day of July, 1963.

_____
CHANCELLOR

[redacted]

[redacted]
[redacted]
[redacted]

[redacted]

Dear Mr. Hathorn:

We have received a copy of the complaint in the matter. While the procedure is very different from our own, I believe it is appropriate to ask motion for a temporary injunction. As I told you in our telephone conversation, we would be very happy to provide you copies of the papers we use in this matter.

I am writing to tell you that I will be out of the office during the coming week, but Mr. Elmer Dodds is fully familiar with the matter, and if there is anything that requires attention we suggest that you call him.

Thank you very much for your cooperation and [redacted]

Sincerely yours,

[redacted]

[redacted]

[redacted]
[redacted]

CORE Gen'l

LAW OFFICES
LIEBERMAN, KATZ & ARONSON
COUNSELORS AT LAW

ELIAS LIEBERMAN
VINSON C. ARONSON
ISADORE KATZ

PARAMOUNT BUILDING
1501 BROADWAY, NEW YORK 36
TICKERING 4-2462
2463
2464

RECEIVED
AUG 13 1963
VLADECK & ELIAS

August 12, 1963

Vladeck & Elias
280 Broadway
New York 7, New York

Attention: Miss Rubin, Secretary
to Carl Rachlin, Esq.

Dear Miss Rubin:

I am returning herewith the memoranda which you were kind enough to let us borrow in connection with the preparation of the defense for the most recent group of C.O.R.E. "sit-ins" at Rutgers Houses.

I would also like to thank you for all the generous help which we have received from both yourself and Mr. Rachlin. All of us are very grateful to you.

Sincerely,

Benita T. Cannon

(Mrs.) Benita T. Cannon

bc/
encl.

M E M O R A N D U M

TO: CARL BACHLEIN

FROM: JUDITH P. VLADECK

RE: CAMBRIDGE

On Monday evening, July 29, I received a telephone call f[illegible] referred to us by Marvin Rich. [illegible] Cambridge where recently an effort has been made to [illegible] a laundromat.

Over the past weekend, customers have been forcibly ejected [illegible] the washing cycle has been completed. Demonstrators, I [illegible] were not interfered with by the police. But the owners of [illegible] business themselves personally assaulted some of the [illegible] Last night papers were served on some of them. At first [illegible] as if it was the standard injunction. We have still not [illegible] copy but it now appears that this is a lawsuit based on [illegible] to destroy a business.

In any event, we obtained counsel in Washington at a [illegible] Southern is to keep in touch with us and we will work [illegible] the drafting of papers. There is an order to show cause [illegible] on Tuesday which appears to contain a stay.

Locke can be reached thru
Ken Stephens - 482-1451 Ext.
Pat Bellamy Cook 483-1681
Oak Ridge

City - Martin Southern
522-4121

Room 291
Rm 5th Floor

W. H. H. SOUTHERN
IN MEMORIAM
MARTIN SOUTHERN
RES. 522-1397

SOUTHERN & SOUTHERN
ATTORNEYS AT LAW
ROOMS 201-8 REALTY BLDG.
TELEPHONE 522-4129
KNOXVILLE 2, TENNESSEE

ASSOCIATES
CHARLES W. SOUTHERN
DONALD B. SOUTHERN

RECEIVED
AUG 22,
VLADECK & ELIAS

August 20, 1963

Vladeck and Elias
Attorneys at Law
280 Broadway
New York 7, New York

Attention: Mrs. Judith P. Vladeck

Dear Mrs. Vladeck:

Re: Young et al
vs- CORE, et al

We were directed by the Judge of our district to brief the question of jurisdiction. This we have done, and enclose a copy of our brief. We hope it will be satisfactory, and effective.

Cordially,

Southern & Southern, Attorneys

BY Martin Southern

MS:ab
CC; Mrs. Nelson I. Stephens
126 Bethune Circle, Oak Ridge, Tenn.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG, ET AL

VS NO. 4772

MRS. NELSON I. STEPHENS, ET AL

BRIEF ON QUESTION OF JURISDICTION BY DEFENDANT-PETITIONERS

For convenience the defendants and cross-complainants, seeking affirmative relief, will be referred to as petitioners. The original complainants and cross-defendants will be referred to as respondents.

The original jurisdiction of this Court is set out in Chapter 85, New Title 28 of the 1948 Revised Judicial Code as enacted June 25, 1948; the special jurisdiction of this Court on the removal of cases from state courts is set out in Chapter 89 New Title 28, of the Revised Judicial Code.

Generally, except when expressly provided otherwise, any civil action of which the District Court would have original jurisdiction, may be removed from the state court. Consideration of both original jurisdiction and removal jurisdiction should be considered.

In the absence of any allegation of monetary value of matters in controversy, petitioners do not rely on the allegation of diversity of citizenship, contained in the second paragraph of their petition.

Section 1331 provides jurisdiction of civil actions of requisite monetary involvement, "and arises under the Constitution, laws or treaties of the United States" But the Reviser's Note adds: "Jurisdiction of federal questions arising under other sections of this chapter is not dependent upon the amount in controversy."

Section 1343 provides jurisdiction by any person ..... (3) To redress the deprivation, under color of any stae law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress...

Chapter 89, for removal of cases from state courts, elaborates on the jurisdiction. Section 1441 says: "(b) Any Civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residences of the parties."

Section 1443 elaborates on civil rights cases that may be removed, as follows: "(1) Against any person who is denied or cannot enforce in the courts of such state a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof."

Under the last provision petitioners have alleged in Paragraph 3 of their petition that they are members of a minority racial group, and that defendant Congress Of Racial Equality is an organization that campaigns in behalf of civil rights of minority groups, and that as a consequence they do not believe they can obtain justice in the State court in which suit was filed.

or any other state court. Therefore two of petitioners filed an affidavit that from prejudice and local influence they do not believe they can obtain justice in the State Court.

Diversity of citizenship is a supplementary allegation that may not be pertinent; the affidavit of prejudice is also a supplementary allegation, but one that is believed to be material and pertinent under section 1443 as cited above.

The positive matter of jurisdiction of this case is in the allegation that the matters in controversy involve and embody the civil rights of petitioners under the United States Constitution, the First and Fourteenth Amendments of said Constitution, and the deprivation of their rights by the injunctive processes of said Court.

The matters in controversy are not elaborated in the Petition For Removal, but a verbatim copy of original bill and of subpoena served on them are filed by them as exhibits one and two and a part of the record; that they have also filed a detailed answer and a prayer for affirmative relief in the nature of a cross-bill, all of which disclose the substance and details of infringement upon upon and the deprivation of the rights of petitioners under the United States Constitution and the use of the injunctive processes of the state court for the illegal practice of racial discrimination.

Petitioners by their counsel conceived it to be the sound practice of good pleading to allege the involvement of the Constitution and the deprivation of their rights without the elaboration of details elsewhere contained in the record, but if the court finds them in error on this point, they pray to be allowed to amend their Petition to incorporate the details elsewhere set out.

Montgomery's Manual of Federal Jurisdiction and Procedure, Section 58, says: "The District Court has been held to have jurisdiction of such a suit (constitutional provisions) regardless of allegation and proof as to diversity of citizenship or the amount in controversy."

In Gully v. First National Bank 299 U.S. 109, 81 L ed. 70, in which removal based on "Federal question" was rejected, Mr. Justice Cardozo enunciated the principle: "To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. The rights or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another."

The district courts' jurisdiction in matters of civil rights is definitively stated in our own Tennessee Apportionment case, Baker v. Carr, 369 US 186, 7 L ed 2d 663, 82 S. Ct. 691, decided March 26, 1962.

Mr. Justice Brennan in giving the opinion of the court said: "This civil action was brought under 42 USC §1983 and 1988 to redress the alleged deprivation of federal constitutional rights.... The (district) court held that it lacked jurisdiction of the subject matter.... we held that the dismissal was error...."

And particularly significant, we deem: "We said in an earlier voting case from Tennessee: 'It is obvious...that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and therefore, jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that action was not one arising under the Constitution and laws of the United States' Swafford v. Templeton 185 US 487,493,46 L ed

1005, 1008, 22 S. Ct. 783, 'For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction.' Bell v. Hood, 327 U.S. 678, 682, 90 L ed 939, 943, 66 S. Ct. 773...."

"Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power definied in Art. 3 §2, and so within the power of Congress to assign to the jurisdiction of the District Courts. Congress has exercised that power in 28 USC §1343(3)"

Our complaint is not set out in our Petition For Removal, but the federal nature of the case and constitutional involvement are clearly set out in original bill, answer, and cross-bill.

CONCLUSION

To summarize, we have the elements of federal jurisdiction in the following federal questions.

1. Do petitioners have a right of peaceable assembly in front of public business owned by complainants but licensed to serve the public by state, county, and city, for the purpose of protesting against racial discrimination, under the First Amendment?

2. Do petitioners have a right to inform the public by peaceable means of the practices of racial bias and discrimination complainants, or to abridge their freedom of speech under the First Amendment.

3. Do petitioners have a right as citizens of the United States to enter upon the premises of complainants' for the purpose of paying to use their facilities for washing clothes, as they are licensed to provide for the public.

4. Is an allegation of congregating or marching in front of business and carrying cards any ground for restraining petitioners by injunctive process under Tennessee statute from entering on property of respondents and the peaceful use of their facilities, on account of race or color?

5. Under the Fourteenth Amendment can a state or any governmental body convey with a license to do business with the general public the right to discriminate against patrons of the business on account of race or color, which is forbidden to the state or any governmental body?

6. Can a state through its licensing practices for the privilege of operating businesses abridge the privileges or immunities of the citizens of the United States, or deny the citizens seeking to patronize said businesses equal protection of the laws.

7. Finally, under the recent decision of Judge W. E. Miller in the case of Dr. Vasco A. Smith, Jr. vs Holiday Inn, filed under the equal protection clause of the Fourteenth Amendment, is not the site of respondents' business in the Oak Ridge area also a federally financed re-development area, in which the government retains "controls over the future uses of the property," and are they not also bound by the equal protection clause of the amendment?

It is true that these elements of federal jurisdiction are not enumerated in the petition, but they are amply disclosed in the record before the court.

Respectfully submitted,

Martin Foulkes

Attorney For Petitioners

W. H. H. SOUTHERN
IN MEMORIAM
MARTIN SOUTHERN
REG. 522-1397

SOUTHERN & SOUTHERN
ATTORNEYS AT LAW
ROOMS 201-8 REALTY BLDG.
TELEPHONE 522-4129
KNOXVILLE 2, TENNESSEE

ASSOCIATES
CHARLES W. SOUTHERN
DONALD B. SOUTHERN

CARE
Gov 1

RECEIVED
SEP 23 1963
VLADECK & ELIAS

September 20, 1963

Mrs. Nelson Stephens
126 Bethume Circle
Oak Ridge, Tennessee

Dear Mrs. Stephens:

RE: JOE YOUNG CASE

I have never received any suggestion from Mr. F. B. McKissick about the action to take on our potato. At the time he was here I was inclined to abandon our effort to remove it to the Federal Court, and to try it out in the state court.

I have changed my mind. I would like to appeal it to the Court of Appeals at Cincinnati. We will have to move fast. The order remanding was entered August 26, and we have 30 days - Tuesday, September 24 is our deadline.

The cost is $5.00 with notice of appeal, $25.00 to the Court of Appeals. My brief will have to be printed, and that is an expense that must be considered. When it comes up for argument in Cincinnati, I will want to have my expenses paid.

We will have to make a $250.00 cost bond. Can you, Winston, and some others see me Monday?

Best regards,

Martin Southern

MS:ab
CC: Vladeck & Elias, Attorneys
280 Broadway, New York 7, N.Y.
Honorable F. B. McKissick, Atty.
213½ W. Main Street, Durham, N.C.

Southern

LAW OFFICES
IRVING R. M. PANZER
1735 DE SALES STREET, N. W.
WASHINGTON 6, D. C.

TELEPHONE
STERLING 3-3391

Recd 1/22/64

January 21, 1964

Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

Dear Carl:

Here are some "abuse of discretion" cases that you might use in your case appealing from a remand:

U. S. v. Corrick, 298 U. S. 435
Craig v. Smith, 100 U. S. 226
Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310
National Grain Yeast Corp. v. City of Crystal Lake, 147 F. 2d 711
Tozer v. Krause Milling Co., 189 F. 2d 242
Bridoux v. Eastern Air Lines, 214 F. 2d 207
Western Union v. Dismang, 106 F. 2d 362
Gillette Safety Razor Co. v. Triangle Mech. Lab. Corp., 87 F. 2d 699

A large collection of "abuse of discretion" cases as to new trials, too many for me to copy, is set forth in footnotes 60-72 on pages 3836-3840 and footnotes 55 and 56 on pp. 3909-3911 of volume 6 of Moore's Federal Practice.

For the proposition that your "appeal" may be considered as a ~~motion for leave~~ to file a petition for a writ of mandamus, there seem to be a couple of 9th circuit cases more or less on the nose for you. Shapiro v. Bonanza Hotel Co., 185 F. 2d 777; Steccone v. Morse-Starrett Products Co., 191 F. 2d 197. The 2d Circuit has an unfortunate case to the contrary, Zamore v. Goldblatt, 201 F. 2d 738, criticized by Moore in 6 Moore's Federal Practice at page 93.

You would also cite, for the general proposition, 7 Moore's Federal Practice 214: "Nomenclature is unimportant". A motion for one thing may be considered a motion for another thing, if it states proper grounds. Again, on page 299, he says (citing cases): "Since nomenclature is unimportant, the moving papers may be treated as a motion under 60(b), although mislabelled". On page 642 he says, citing cases, that an independent action may be treated as a 60(b) motion, and a 60(b) motion may be treated as an independent action, so long as the other party is not prejudiced.

Sincerely,

Irving R. M. Panzer

[redacted]

[redacted]

W. H. H. SOUTHERN
IN MEMORIAM
MARTIN SOUTHERN
RES. 523-1397

SOUTHERN & SOUTHERN
ATTORNEYS AT LAW
ROOMS 201-8 REALTY BLDG.
TELEPHONE 522-4129
KNOXVILLE 2, TENNESSEE

ASSOCIATES
CHARLES W. SOUTHERN
DONALD B. SOUTHERN

FEB 24 RECD

February 20, 1964

Honorable Carl Rachlin
Attorney at Law
165 West 46th Street
New York, New York 10036

file in Jones Skelton

Dear Carl:

My regret about the brief you sent me is that I must relinquish it to my adversary counsel. I told him that when the smoke of battle had cleared away that I wanted it back. It is quite an exceptional job.

Provision of Article 9 of pending Civil Rights Act is interesting and significant. I agree that we should not be in hurry to argue motion to dismiss.

Cordially,

Martin Southern

MS:ab

RECEIVED
JAN 2 6 1954
WILDRICK, ELIAS, FRANKLE & TEMPLE

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOE E. YOUNG AND WILLIE H. MABREY

COMPLAINANTS-APPELLEES

VS

NO. 15634

MRS. NELSON I. STEPHENS,
Individually and as Chairman
of Congress Of Racial Equality

DEFENDANTS-APPELLANTS

APPELLANTS ANSWER AND BRIEF ON MOTION FOR DISMISSAL
OF APPEAL

Appellees cite only one question in their brief in support of their motion to dismiss appeal. Appellants think there are two questions involved, that are essentially peculiar to this case, and differentiating it from other remanding orders

STATEMENT OF QUESTIONS INVOLVED

QUESTION ONE

When Petitioning Remover files with his Petition for Removal an Answer and a Cross-Complaint, assuming role of a cross-complainant and seeking affirmative relief, basing jurisdiction on section 1343, Title 28 USCA, can the district court, ignoring the request for affirmative relief in his order to remand a proper subject of judicial review on appeal?

Appellants say it is, appellees deny it.

QUESTION TWO

Does section 1447, Title 28, USCA, banning review of an order to remand to state court apply to civil rights cases, for which jurisdiction by removal is provided under section 1443 of said Judicial Code?

Appellants deny that it applies to civil rights cases, appellees insist it does.

SUMMARY OF FACTS

A petition for removal, Answer And Cross-bill were filed simultaneously in the United States District Court for the Eastern District of Tennessee on August 5, 1963. The original case for which removal was sought was filed in the Chancery Court of Anderson County, Tennessee on July 29, 1963. (See pages 3a-14a inclusive of appendix of appellants' main brief)

Appellees filed notice of motion to remand to state court on August 23, 1963, and on August 26, 1963 the District Court denied appellants' petition and ordered that the case be remanded to the State court. (Brief appendix pp. 16a, 17a.)

ISSUES AND THE LAW

QUESTION ONE

When Petitioning Remover files with his Petition for Removal an Answer and a Cross-Complaint, assuming role of a cross-complainant and seeking affirmative relief, basing jurisdiction on section 1343, Title 28 USCA, can the district

ignoring the request for affirmative relief in his order to remand a proper subject of judicial review on appeal?

Under the common law and in all courts it is the privilege of a defender in litigation not only to use a counter-claim as a defense, but to seek affirmative relief in the tribunal having jurisdiction. As an integral part of this same, incorporated into appellants' Answer, the order to remand in effect dismisses the cross-complaint, although remand order makes no reference to it.

If cross-complaint had been filed as an original action, and the dismissal had been in fact as well as effect, there would be no question of a right of appeal. As a civil rights constitutional question, under section 1343, an order denying jurisdiction would be reviewable on appeal. How can it lose that character of being reviewable, simply because it is integrated into a case that originated in a state court, for which removal is sought?

It might be theorized that as a remand does not terminate a case, because it can be tried in the state court, that the cross-complaint could also be tried in the state court, that appellants could file an answer and cross-complaint in the state court in the same manner as they did in the District Court. So they could, and they might be accorded adequate judicial consideration, even in the matter of racial discrimination in a southern state.

But these appellants sought the tribunal for which the United States Judicial Code afforded them jurisdiction. The fact that it is tied to another action as a cross-complaint, and that the remand order either terminates it or forces them to the jurisdiction of a tribunal not of their choosing does not subject it to the theoretical limitation of ordinary removal cases specifically that it is not reviewable on appeal.

In other words the remand order involves not only the original complaint, for which the appellees insist that section 1447 makes it unreviewable, but also the cross-complaint, predicated for jurisdiction on section 1343, which is unequivocally reviewable on appeal.

QUESTION TWO

Does section 1447, Title 28, USCA, banning review of an order to remand to state court apply to civil rights cases, for which jurisdiction by removal is provided under section 1443 of said Judicial Code?

This is substantially and effectually the same question asked by appellees in the brief on their motion. The answer of appellants is that historically, and based on Congressional intent, is that the limitation predicated on section 1447 (d) is not applicable to civil rights cases based on section 1443.

This precise question is pending in two cases in other Courts of Appeals; specifically Town of Clinton et al v Congress Of Racial Equality, et al, No. 20960 in the United States Court Of Appeals For the Fifth Circuit; and in Baines v. City of Danville, in the United States Court Of Appeals For the Fourth Circuit, argued September 23, 1963.

Robert J. Bird and John D. Black of the Tennessee Bar, acting in behalf of the Oak Ridge Federation For Equal Public Services and with the approval and consent of Appellants, have made application to this Court for permission to file a brief in this case as Amici Curiae. Since they desire to deal more exhaustively with this particular question, the exclusion of civil rights cases from the limitation of 1447 (d), and in order to avoid repetition, Appellants respectfully pray for the Court's

permission to said attorneys to file the brief Amici Curiae and that same be considered here.

CONCLUSION

Operators of automatic laundry service desire Negroes to be barred from the use of their facilities, on property derived from the United States, through the Oak Ridge area once known as "Manhatten Project", and still subject to Federal regulations and controls.

Original bill in state court seeks to bar them from entrance on the premises by injunction, cross-bill in the District Court seeks to bar operators from interfering with their use of these facilities.

There seems to be very slight disagreement on the factual background. The entire controversy was settled in the case of Smith v. Holiday Inns Of America (D.C.M. D. Tenn., July 30, 1963) On the merits no issue remains to be resolved, and the prayer of appellants for the prompt dissolution of injunction as awarded in the state court is urgent and meritorious.

In Turner v. Memphis, 369 U. S. 350, 72 L ed 2d 786, 82 S. Ct. 805, a suit involving a Negro receiving service in a restaurant and predicated for jurisdiction on section 1343 (3), Title 28 USCA, the court said:

> But we see no reason why disposition of the case should await decision of the appeal by the Court of Appeals. On the merits, no issue remains to be resolved.... the litigation should be disposed of as expeditiously as is consistent with proper judicial administration.

Wherefore, appellants respectfully insist that motion of appellees should be denied.

Martin Southern

Solicitor for Amici
[illegible]
[illegible]

July 12, 1967

Meeting: Capt. Maher, Legal Advisor to Director of Selective Service for NYC
Lachlin
Taub

Lachlin discussed the "practical" problem of whether court action on the relatively minor problem of statutory & reg. interpretation was worthwhile. He also presented the argument that by taking Zahra away from the Welfare Dept., the Local Board was hurting the ~~the~~ national interest.
Maher in response repeated Gen. Hersey's position that the national interest requires COs to be discommoded in order to discourage teachers, etc from seeking CO status in order to continue in their current jobs. (However Maher indicated he had personal doubts about that interpretation)
Since the decision to prosecute Zahra must be made by the National Director, Maher agreed to forward to Wash. with Zahra's file a request from Lachlin to meet with the appropriate reviewing officer.

ZANKA, STEVEN, ALBERT VS. UNITED STATES of AMERICA NEW YORK 1967-1968
(DRAFT)

Society Of Wisconsin

Please Retain Original Order

USA 52-119

UNITED STATES DEPARTMENT OF JUSTICE

UNITED STATES ATTORNEY
For The
Eastern District of New York
Federal Building
Brooklyn, New York 11201

UNITED STATES OF AMERICA	:	INDICTMENT
vs.	:	Criminal No. 68 CR 85
	:	Folder No. 677-350M
STEPHEN ALBERT ZAHRA	:	Mailed March 18, 1968
	:	

PLEASE TAKE NOTICE that the above case will be called in the United States District Court for the Eastern District of New York, 225 Washington Street, in the Borough of Brooklyn, on the 4th day of APRIL 1968, at 10:00 o'clock in the forenoon, 6th Floor, Courtroom # 9, at which time the defendant herein will be required to plead to an indictment heretofore filed, for an alleged violation of the United States Criminal Code.

If defendant fail to attend, a warrant will be issued for HIS arrest.

Joseph P. Hoey /gs
United States Attorney
JOSEPH P. HOEY

To: STEPHEN ALBERT ZAHRA
Defendant

To: CARL RACHLIN
Attorney

To:
Bondsman

COPY OF THE INDICTMENT IS [redacted]
INFORMATION

PER: [redacted]

To Bondsman: You are notified to produce the above-named defendant on the above date, otherwise the bond will be forfeited. not defaulted, on the above date.

MJK:MR:SR
F.6773508

68CR 851

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA

-against-

STEPHEN ALBERT ZAHRA,

Defendant.

----------X

FILED

MAR 14 1968

INDICTMENT

Crim. No. _____

50 U.S.C., App. §§456(j) and 462(a).

THE GRAND JURY CHARGES:

On or about and between the 10th day of July 1967 and the date of filing of this indictment, within the Eastern District of New York, the defendant STEPHEN ALBERT ZAHRA, a person registered pursuant to the Universal Military Training and Service Act, as amended, the Proclamations of the President of the United States, and the Regulations issued and promulgated pursuant to said Act, knowingly failed and neglected to perform a duty required of him under and in the execution of said Act and Regulations by knowingly failing and neglecting to obey an order of said defendant's Local Board, requiring him to report to the Local Board on the 10th day of July 1967, for the purpose of receiving instructions to proceed to the New Jersey State Hospital, Greystone Park, New Jersey, after notice had been given to the defendant by Local Board 49, exercising jurisdiction in that behalf, requiring the defendant to report for civilian work contributing to the maintenance of the national health, safety or interest, the defendant having been assigned to hospital work on the 10th day of July 1967. (Title 50, U.S.C., App. §§456(j) and 462(a))

A True Bill.

_____
Robert E. Dowd
Foreman

_____
JOSEPH P. HOEY
United States Attorney
Eastern District of New York

W-1

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
250 CHURCH STREET
NEW YORK, N. Y. 10013
TELEPHONE 344-8700

MITCHELL I. GINSBERG
COMMISSIONER

March 10, 1967

Selective Service System
Local Board No. 49
271 Washington Street
Brooklyn, New York

RE: Stephen Zahra
Selective Service No. 50-49-43-340
Classification 1-O

Dear Sirs:

Mr. Stephen Zahra is a caseworker in good standing in the Department of Welfare. We feel that the work he is engaged in is extremely important and essential. Coupled with this, is the difficult problem faced by the Department in recruiting college graduates to fill the available jobs as caseworkers.

Since Mr. Zahra has already been classified as a conscientious objector, we respectfully request that Mr. Zahra be assigned by you to the Department of Welfare. This would enable him to continue the highly constructive and difficult work he is performing in our attempt to solve some of the problems faced by the large number of people on Welfare.

Thank you for your serious consideration.

Sincerely,

Mitchell I. Ginsberg
Commissioner of Welfare

NEW YORK CITY HEADQUARTERS
SELECTIVE SERVICE SYSTEM
205 EAST FORTY-SECOND STREET
NEW YORK, N.Y. 10017

March 31, 1967

REFER TO FILE
10:34:slr

Mr. Stephen Zahra
18-22 21st Avenue
Astoria, New York 11105

Your SS No.: 50 49 43 340

Dear Mr. Zahra:

I have your letter of March 25, 1967, and in light thereof, have reviewed your case.

There is no right to appeal the Local Board's determination as to appropriate employment for you to perform as a Conscientious Objector in lieu of military service. However, the determination will be reviewed by the Director of Selective Service for his approval prior to the issuance of any order to report for civilian work.

The decision as to what constitutes appropriate work for you was made by the Local Board and no intervention on my part seems to be warranted.

I am forwarding a copy of your letter, together with my reply to the Local Board for their information.

Sincerely yours,

PAUL AKST
Colonel, USAF
New York City Director

cc: Local Board 49

NEW YORK CITY HEADQUARTERS
SELECTIVE SERVICE SYSTEM
205 EAST FORTY-SECOND STREET
NEW YORK, N.Y. 10017

April 7, 1967

REFER TO FILE
10:18:RS

Mr. Stephen Zahra
18-22-21st Avenue
Astoria, New York 11105

Re: SS No. 50 49 43 340

Dear Mr. Zahra:

This is in reply to your letter of April 1, 1967.

As indicated in my letter of March 31, 1967, the decision as to what constitutes appropriate work for you to perform as alternative service was made by the local board; no intervention on my part is warranted.

The local board is meeting on April 19, 1967 and will review all information in your file at that time.

Sincerely yours,

PAUL AKST
Colonel, USAF
New York City Director

NEW YORK CITY HEADQUARTERS
SELECTIVE SERVICE SYSTEM
205 EAST FORTY-SECOND STREET
NEW YORK, N.Y. 10017
573-6171

REFER TO FILE

34-gp

April 10, 1967

Mr. Steven Zahra
18-22 21st Avenue
Astoria, New York 11105

Your SS No.: 50 49 43 340

Dear Mr. Zahra:

In answer to your recent telegram, 1660.21 of our Regulations originated by Executive Order dated February 20, 1952 under the authority vested in the President by Congress in Section 6.J of the Universal Military Training and Service Act of 1954 as amended.

FOR THE NEW YORK CITY DIRECTOR

Thomas R. Maher

THOMAS R. MAHER
Captain, AGC
Chief, Legal Division

18-22 21st Avenue
Astoria 11105, N.Y.
April 12, 1967

General Lewis B. Hershey
National Director of Selective Service
1724 F Street North West
Washington D.C. 20035

Dear General Lewis B. Hershey:

This letter is in reference to the case of myself, Stephen Zahra, of the above address, SSN: 50 49 43 340, registered at Local Board #49, 271 Washington Street, Brooklyn, N.Y., and classified in category 1-O by that Board in 1964.

I am writing to you concerning your interpretation of the following Selective Service Regulation referred to under section 6j of The Universal Military Training and Service Act of 1948 contained in section 16 of title I of the foregoing as amended by Executive Order 10420 on December 17, 1952 and known as Selective Service Regulation 1660.21, paragraph A. The Regulation reads as follows:

1660.21 General Provisions Relating to Orders by the Local Board to Perform Civilian Work. (A) No registrant shall be ordered by the local board to perform civilian work in lieu of induction in the community in which he resides unless in a particular case the local board deems the performance by the registrant of such work in the registrant's home community to be desirable in the national interest.

I am presently employed as a caseworker for the Department of Welfare of the City of New York. I am fully trained for such a position by dint of education, formal on-the-job training courses, and practical experience over the last eight months, and in light of the serious shortage of social caseworkers in the Department of Welfare in New York City, feel that my maintaining my position in the Department would be exceptionally in the national interest.

Moreover in a meeting with my Local Board on February 15, 1967 my claim was recognized as a valid one by Chairman Sillechia and the other board members of the above named Local Board. At their request I obtained a letter from Commissioner of Welfare Mitchell I. Ginsberg, a copy of which is enclosed, stating that the work I am engaged in "is extremely important and essential " and that the Department faced a "difficult problem" in "recruiting college graduates to fill the available jobs as caseworkers."

In a second meeting with the Local Board and Captain Maher, USA, legal advisor to the Director of Selective Service for New York City, 205 East 42nd Street, I was told by the Captain speaking for the Board that "of course" my present position was "definitely in the national interest" but that it would be "more in the national interest" if I found a job which would "discommode" me so that my position as a conscientious objector serving in the national interest would be equitable to that of the soldier who is forced to leave his home to fight or serve in distant lands. That meeting took place on March 15, 1967. 573-6171

In a personal interview with Captain Maher on April 10, 1967 at his office, he read to me, at my request, portions of a letter written

by you to Senator Javits of New York State, dated February, 1967. The letter concerned the request of another registrant in class 1-O who saught to fullfil his obligation by working as a librarian in the library of Columbia University.

In this letter you indicated that he could not work there because the conscientious objector is required by law to work for a non-profit organization and that it was your interpretation of Section 1660.21, paragraph A of the Selective Service Regulations that the conscientious objector could "reasonably expect some of the disruptions to his normal way of life" common to the life of the man in the armed services. Captain Maher further quoted you as saying that "The President and Congress did not intend that the registrant in class 1-O should continue his employment in the competitive labor market" and that he should seek work in the national interest beyond commuting distance outside his community so that his position in so doing would be more equal to that of the man in the armed services.

I have conferred with my attorney and we have come to the conclusion that your interpretation of the above regulation referred to is an unreasonable interpretation. We respectfully submit the following arguments for your consideration.

In the first place my position as caseworker with the Department of Welfare of the City of New York is in no way equatable to that of the registrant seeking to work in a library. The Departmentoof Welfare is a non-profit organization and my position there as caseworker is by admission of the Local Board and Captain Maher definitely in the national interest. Further, you will see by the enclosed statement of Commissioner of Welfare Mitchell I. Ginsberg that I am a valued staff member and that maintaining caseworkers at the Department of Welfare is a problem to the Commissioner.

Secondly we come to your interpretation of the terms "community" and "home community" as found in Regulation 1660.21 above. I have scoured the Definitions section of the Selective Service Regulations and no where do I find the terms in question defined under the Selective Service Law as you have interpreted them. In fact the terms are not defined at all. Since the terms in question are undefined it would seem reasonable to assume that the word " community" or the phrase "home community" would mean what it is normally supposed to mean in common parlance. For example, I reside in Queens; my "home community" is normally thought of as the few square blocks surrounding my home or at the most the entire borough of Queens considering that I live in a rural community. Which brings me to my next point:

I am given to understand that you interpret "community" as meaning the entire raidius of fifty miles outside or away from my place of residence. Perhaps such an interpretation is justified if I were living in sparsely settled land or in a country community where towns or villages or settlements were located over great distances. But this is obviously not the case. I reside in a very busy, rural and metropolitan city where the term "community" has an entirely different context. In this context "community" is thought of in terms

of the ~~area~~ AREA immediately surrounding one's residence; or one's borough is one's community as in "community center". You can see that in light of this more commonly used definition, I am in fact working outside of my community.

Further, it seems unreasonable to define "community" in such a way so that it includes the area not under the jurisdiction of the Local Board. Do not the Local Boards operate within certain boundaries which may be designated as Local Board "communities"? If so, where then do Local Boards derive the authority to call areas NOT under their control or authority as the registrant's community? It would seem that the registrant's community would be the same as the area controlled by the Local Board. Under your interpretation of the word community you ask me to accept an obvious inconsistency, i.e., that although the area outside the jurisdiction of my Local Board was not in my Local Board's community it was still considered to be in my community.

My second argument follows immediately and concerns the exact meaning of the section of the Regulation in question. You will note that Section 1660.21, paragraph A, of the Selective Service Regulations contains two clauses; a main clause and a qualifying clause.

The main clause states that a registrant in class 1-O may not work in his home community unless certain conditions are met and the second clause qualifies the main clause in that it tells when and how such conditions are satisfied, i.e. "unless in a particular case the local board deems the performance by the registrant of such work in the registrant's home community to be desirable in the national interest."

It would seem that your interpretation of Section 1660.21 paragraph A writes out the second or qualifying clause.

My Local Board and Captain Maher have conceeded that my present position is "of course" in the national interest. The law says nothing about being "more" or "less" in the national interest. It merely states that the Board must deem a job, any job, in the national interest. The Board and Captain Maher have so deemed.

The law says nothing about the job being "beyond commuting distance" nor does it state anything about the conscientious objector being discommoded or having his life disrupted. Your interpretation, General Hershey, militates against the qualifying clause of the law to the extent that it totally ignores it. Your insistence that the conscientious objector remove himself from the competitive labor market is unreasonable because it gives a punitive characterization to the regulation which is not indicated in that specific law.

Your interpretation, i.e., that the conscientious objector should discommode himself so that his position would be more equal to that of the man in the armed services, excludes, a priori, that all important qualifying clause of the law.

First of all, under the law the conscientious objector's position is not equatable to that of the man in the armed services since the conscientious objector in class 1-O neither wears a uniform nor does any of the other things men in class 1-A are expected to do.

Secondly, the qualifying clause which tells when a conscientious objector MAY work in his home community, i.e,, when the Local Board deems it to be in the national interest, is written out of the law by your insistence that Congress did not intend the law to mean what is exactly stated: That certain conditions DO apply when the national interest is observed even though the registrant continues to reside in his home community.

Your interpretation of the above cited law would seem to write out the very thing it was written to guarantee and in such a light, that opinion can only appear as arbitrary and capricious .

I hope you will re-examine Section 1660.21 paragraph of the Selective Service Regulations is the light of the arguments I have presented above.

I am presently employed as a caseworker for the Department of Welfare of the City of New York and I believe it is in the national interest that I remain at my position.

Please consider my request.

Thankyou.

Sincerely,

Stephen Zahra

Stephen Zahra

18-22 21st Avenue
Astoria 11105, N.Y.
April 12, 1967

Carl Rachlin, Legal Director
SEDF, Inc.
150 Naussau Street
New York, N.Y.

Dear Carl Rachlin:

Enclosed please find a copy of the letter I recently sent to General Hershey as you advised. You will also find attached to this letter a copy of Commisioner Ginsberg's letter.

Copies of this letter were sent to: Senator Javits, Captain Maher, Chairman Sillechia of Local Board #49, of course Hershey, and to CCCO.

Thankyou very much for your past advice and interest.

Any future action by you on my behalf will be greatly appreciated.

Sincerely,
Stephen Zahra
Stephen Zahra

file

OFFICE OF THE DIRECTOR

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
1724 F STREET NW.
WASHINGTON, D.C. 20435

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

APR 20 1967

Mr. Stephen Zahra
18-22 21st Avenue
Astoria, New York 11105

SS No. 50-49-43-340

Dear Mr. Zahra:

This is in reply to your letter of April 12, 1967, in which you stated that you were taking exception to the Director's interpretation of section 6(j) of the Universal Military Training and Service Act, as amended.

Under section 6(j) of the Universal Military Training and Service Act, as amended, and section 1660.1 of the Selective Service Regulations, conscientious objectors are assigned to such civilian work "as the local board may deem appropriate". The regulations restrict such assignments to employment by the Government or by certain nonprofit organizations, but the purpose of this restriction is to assure that assignments are not made in other areas, and it does not require local boards to approve all employment by the Government or by the nonprofit organizations.

The local board, in determining appropriate work, will make their determination on an individual basis rather than by groups of registrants. Although the determination is made by the local board, the Director of Selective Service is frequently asked for advice or recommendation, or for approval of a local board's recommendation. In such cases he has rather firm guidelines in his interpretation of the intention of the Congress.

The Director feels that since the assignment to civilian work of a conscientious objector is in lieu of induction into the Armed Forces, he may reasonably expect some of the disruptions of his normal way of life that are experienced by the I-A registrant when he enters the Armed Forces. Among other things, the Director feels that the Congress did not intend that a registrant should continue his normal

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

civilian occupation in the competitive labor market as alternative service. In fact, the Director has been unwilling to give approval of any civilian job as alternative service which could readily be filled from the available competitive labor force. The Director also feels that except in the most unusual cases, alternative service should take the registrant away from his home community at least beyond commuting distance.

In the assignment of conscientious objectors, the aptitude and skill of the individual will be used to the extent possible in work deemed appropriate by the local board. In some instances, a highly trained and specialized registrant will not be able to continue in his ordinary occupation and the full use of his training. However, this is not always so. For example, we have conscientious objector physicians working as physicians in lieu of induction, but they are serving in areas such as Alaska, and overseas, where it is mostdifficult to obtain medical care.

Thousands of conscientious objectors have contributed substantially to the welfare of the Nation, the state, and the local community in performing alternative service. Undoubtedly, in many instances, these assignments have required sacrifices on the part of the conscientious objector, but probably to a lesser degree than those imposed on the registrant who is inducted into military service.

Sincerely yours,

Daniel O. Omer

DANIEL O. OMER
Deputy Director

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

18-22 21st Avenue
Astoria 11105, N.Y.
April 22, 1967

Carl Rachlin
Legal Director
SEDF
150 Nassau Street
New York, N.Y.

RE: Our telephone conversation of April 22. (Saturday)

Dear Mr. Rachlin:

Enclosed please find three documents:

1. My original letter to General Hershey (you should have already received this)

2. Commissioner Ginsberg's letter to my Local Board (you should have already received this)

3. My most recent letter to Deputy Omer.

If perchance you receive the "dupes" mentioned above would you please return them as I am short on copies of these first two documents. But only return them if you receive my original letter to you containing these documents.

Thankyou for your continuing assistance.

Sincerely,

Stephen Zahra

18-22 21st Avenue
Astoria 11105, N.Y.
April 22, 1967

Selective Service System
Mr. Daniel O. Omer
Deputy Director
National Headquarters
1724 F Street NW
Washington, D.C. 20435

RE: Your letter of
April 20, 1967

Dear Mr. Omer:

Thankyou for your courteous reply to my letter of April 12, 1967.

There are, however, a few points I feel were overlooked and I would very much appreciate it if you would be so kind as to answer the following:

1. What is the definition of the word "community" as used in section 1660.21 paragraph A of the Selective Service Regulations and what is the source of that definition?

2. What is the definition of "in the national interest" as used in the above referred to section of the Regulations and what is the source of that definition?

Your cooperation is answering the above questions will be greatly appreciated.

Thankyou.

Sincerely,

Stephen Zahra

SELECTIVE SERVICE SYSTEM

Selective Service System
LOCAL BOARD NO. 49
271 Washington Street
Brooklyn, N. Y. 11201
(LOCAL BOARD STAMP)

IN REPLY, REFER TO:

May 4,1967

Mr. Stephen Albert Zahra
18-22 21st Avenue
Astoria, New York 11105 SSN: 50 49 43 340

Dear Mr. Zahra:

In view of the letter received from Children's Village, Dobbs Ferry, New York, you are hereby directed to appear at this Local Board on Wednesday evening, May 17,1967 at 6:30 P.M. for another interview.

BY DIRECTION OF THE LOCAL BOARD

Marilyn Fox

Marilyn Fox,Clerk
Local Board No. 49

W-1

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
250 CHURCH STREET
NEW YORK, N. Y. 10013
TELEPHONE 344-8700

MITCHELL I. GINSBERG
COMMISSIONER

May 5, 1967

Mr. Stephen Zahra
18-22 21st Avenue
Astoria, New York
New York 11105

Dear Mr. Zahra:

Commissioner Ginsberg has asked me to thank you for your letter of March 23. I deeply regret my delay in responding.

Commissioner Ginsberg is personally very sympathetic to your problem and hopeful that you will be able to remain with our Department. However, the Commissioner regrets that there is nothing additional that we can do on your behalf at this time.

I am very sorry that we could not be more helpful.

Sincerely,

Rachel Wizner

(Mrs.) Rachel Wizner
Special Assistant to
the Commissioner

RW:sh

Central Committee for Conscientious Objectors

2006 Walnut Street, Philadelphia, Pennsylvania 19103 • (215) 563-1480

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KATHARINE ARNETT
Treasurer

ARLO TATUM
Executive Secretary

Fall

May 16, 1967

Stephen Zahra
18-22 - 21st Avenue
Astoria, 11105, N.Y.

Dear Stephen Zahra:

I was glad to see your letter when I returned from my speaking trip. The letter was addressed to Bent Andresen who is on vacation for a month. The letter you wrote to General Hershey was an excellent one and I am wondering if you have had a response from National Selective Service.

Most likely they will fall back on "the local board has the say and if they approve it is okay with us; if they disapprove it's okay with us."

Presumably without contrary "advice" from upstairs, your local board will send you three job possibilities which you can then reject and ask for the meeting with the local board and the representative of the State Director. At that meeting the die will be cast.

Do keep us informed.

Sincerely,

Arlo Tatum

ADT/ak

CC: Carl Rachlin
Legal Director
150 Nassau Street

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
1724 F STREET NW.
WASHINGTON, D. C. 20435

OFFICE OF THE DIRECTOR

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

MAY 17 1967

Mr. Stephen Zahra
18-22 21st Avenue
Astoria, New York 11105

SS No. 50-49-43-340

Dear Mr. Zahra:

This is in response to your letter of April 22, 1967, in which you inquired as to the definition of the word "community" as used in section 1660.21(a) of the Selective Service Regulations and the definition of the phrase "in the national interest" in that section.

The Selective Service System has not formally prescribed a definition for the term "community" in this connection, and so far as I know, the courts have not had occasion to define it, though "Words and Phrases" contains definitions of "community" in other types of cases. I believe, however, that it is generally accepted policy within the Selective Service System that civilian work in lieu of induction must be located beyond commuting distance from the registrant's home in order for it to be outside the "community in which he resides."

With reference to the term "in the national interest," the President, by Executive order, has prescribed section 1660.1 of the Selective Service Regulations, a copy of which is enclosed.

Sincerely yours,

Daniel O. Omer

DANIEL O. OMER
Deputy Director

Enclosure

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

18-22 21st Avenue
Astoria 11105, N.Y.
May 29, 1967

Carl Rachlin
SEDF
150 Nassau Street
New York, N.Y.

Dear Mr. Rachlin:

Enclosed is a copy of letter I would, HAVE, but have not yet, sent to Mr. Omer. Previously we had discussed the advisability of you sending such a letter. You said you wanted to see a draft and then you would decide.

If you send the letter, please send me a copy of your letter for my file. If you decide I should send the letter, please inform me of this.

Thankyou for YOUR continued support.

Sincerely,

Stephen Zahra

18-22 21st Avenue
Astoria 11105, N.Y.
May 29, 1967

Daniel O. Omar
Deputy Director
National Headquarters
Selective Service System
1724 F Street NorthWest
Washington D.C. 20435

Dear Mr. Omar:

Thankyou for your response to my inquiry of April 22, 1967 with your letter of May 17, 1967.

In that letter you stated "that it is generally accepted policy within the Selective Service System that civilian work in lieu of induction must be located beyond commuting distance from the registrant's home in order for it to be outside the 'community in which he resides' "

I have several questions on this point and I would be most appreciative if you might answer them.

1. How is the "community in which he resides" determined? How is this residence determined? Do you mean legal residence, voting residence, congressional district, or something else perhaps. Is my local community determined by my draft board location? If I had moved to California after acquiring my 1-O status would my working in New York City be approved since my "community" would have been already established in California.

2. What is meant by "beyond commuting distance" and "commuting distance" ? Is this determined by the time it takes to get from one place to another or perhaps it is measured in miles? Further, if civilian work must always be located "beyond commuting distance from the registrant's home" does not this definition become contradictory since where ever the registrant happens to live, even while performing civilian work, becomes his home and place of residence? For example, if I were assigned to New Jersey, N.J. would then become the "community" in which I reside. Does not "beyond commuting distance" in this respect become meaningless?

Thankyou very much for past cooperation. Your consideration in answering my inquiry is greatly appreciated.

Sincerely,

Stephan Zakra

50-49-43-340

18-22 21st Avenue
Astoria 11105, N.Y.
May 29, 1967

Selective Service System
Local Board No.#49
271 Washington Street
Brooklyn 11201, N.Y
Dear Sirs:

The following is an account of the proceedings which took place on the evening of May 17, 1967 at the address of the Selective Service System named above, at approximately 7:00 P.M. I respectfully request that this account of the proceedings be inserted into my file.

Present were three members of the Local Board including Chairman Sillechia. Also present was a person we were told was an additional board member, Mr. Kupfer. In addition to myself, Stephen Zahra, and my friend and witness Miss Priscilla Haslett, there were present Miss Marilyn Fox, clerk of Local Board No. #49, Captain Maher, of the Director's office of Selective Service of the City of New York , and one additional gentleman dressed in civilian attire. Captain Maher introduced this gentleman as Captain Reynolds who is attached to a special unit of the reserve forces of the Selective Service System and whose function at this meeting was to be "merely an observer." Captain Maher asked me if I had any objections to the presence of Captain Reynolds. I replied that I had no objections.

Captain Maher stated that the purpose of this meeting was to determine whether or not I had secured other employment in accord with his directions that I secure employment outside of the City of New York, in light of the fact that the Children's Village in Dobbs Ferry, N.Y., had sent the board a letter informing them that I was not suited to working with children of the age group found in the Children's Village. I replied to Captain Maher that I was told at the time of my interview with Mr. Brown of the Children's Village that the reason I was not accepted for the position was because I was "over-qualified." Mr. Sillechia and Captain Maher replied that nowhere in the letter from the Children's Village did there appear a statement to the effect that I was over-qualified. I told them that my "over-qualification" could be verified by contacting Mr. Brown of the Children's Village.

I then restated my argument that the term "community" remains undefined in Selective Service Regulations and that General Hershey's interpretation actually nullifies the qualifying clause of section 1660.21, paragraph A of the Selective Service Regulations. I then asked the board to reconsider my request that I be allowed to remain as caseworker for the Department of Welfare in light of a special request from Commissioner of Welfare Mitchell I.Ginsberg and in light of the acute staff shortage there and especially in light of Children's Village's statements to me that I was overqualified for a child-care position.

addition. I then stated that since I believed that the law supported my claim that the work I was performing was "in the national interest" and since the Board had agreed prior to and after Captain Maher's intercession in these affairs that the work I was presently performing was definately in the national interest, and since Captain Maher agreed that it was in the national interest, I would refrain from further seeking alternative service and that if a compulsory work order was issued, I would contest it in the proper legal manner.

Captain Maher then restated the policy of General Hershey regarding his interpretation of section 1660.21 paragraph A of the Selective Service Regulations and asked me if I though he had presented General Hershey's feeling acurately. I agreed that he had.

I then pointed out that if I were employed in some industry which contributed indirectly to the war effort, such as making cartons which would ultimately contain bullets, they would not probably insist that I seek similar work in factory outside of New York City. Captain Maher agreed that this was probable but that in that case I would be re-classified. He further stated that this statement of mine brought a "doubt" to his mind about the validity of my claim to be a conscientious objector. I replied that I merely used this example as an analogy to illustrate the unreasonableness of his positionm but that in no instance would I contribute directly or indirectly to the killing of another human being. I was then asked if this included payment of taxes. I answered that it did, and that I had already refused to pay the tenpercent telephone tax instituted to help finance the war. I added that although I could do nothing to prevent the government from taking taxes from my paycheck, I would refuse to pay income taxes voluntarily.

Captain Maher asked me about getting a position in a Welfare agency outside of New York City. I replied that I had been trained by the Department in our city and that it would be meaningless to accept employment in Nassau or Suffolk county as he had previously suggested bbecause it violated his own "wrong" interpretation of the qualifying clause referred to above. He had previously interpreted that it was necessary for me to obtain employment beyond fifty miles of my place of residence.

Mr. Sillechia then said that the Board had voted before I came into the room and the result was that they would not approve my working for the Department of Welfare in New York City. He said. "WE have never disputed the fact that the Department of Welfare may be in the national interest of the nation." Captain Maher added that although it is in the national interest, "work in the Department of Welfare is not in the national interest in your particular case" The chairman added, "You are not irreplaceable."

Miss Haslett then explained to the Board the need for staff in the Department of Welfare of New York City as was documented by Commisioner Ginsberg's letter and other data in my file. Captain Maher referred to the job opportunities for hospital employment in New Jersey as well as welfare work in other communities as discussed previously with me. He explained

that the Board would reccomend to the National Director that I be assigned to perform Hospital work at the New Jersey State Hospital, in Greystone Park, New Jersey.

The chairman, Mr. Sillechia pointed out that "every opportunity" had been extended to me by the Board to seek work in another community in the field in which I was qualified. Captain Maher added that hospital work might include some caseworker functions such as counseling at the discretion of the hospital director.

Captain Maher informed me that in accordance with proceedure the National Director's office would review my entire file before approving the assignment.

Mr. Kupfer than read the letter from Commissioner Ginsberg and pointed out that although the Commissioner had said that the work I was performing was "extremelyimportant and essential" he did not say that I was extremely important and essential. I replied that this was merely a semantic argument and that in the last analysis everyone could be replaced no matter how important. I further argued that the proper test was the nature of the work involved in meeting this criterion of "essential and importance." Mr Kupfer replied that he agreed that the work I was doing was important but that "the letter doesn't say your particular employment in the Department is essential"

I replied that other Local Boards considered it essential because I knew of several cases where they had given 2A's to employees of the Department. Mr. Sillechia then asked me if I would request a 2a (occupational deferment). I was informed that the Board would consider such a request. I replied that first of all previously I was told that I was not elegible for such a classification and that this pointed to inconsistency on the part of the Board. Secondly, I said that I could not conscientiously request such a classification since I believed that such classification further promoted the inequities already existing in the Selective Service System. Mr. Sillechia replied that since I would not make such a request he had no alternative other than reccommending I be assigned to Greystone Park, New Jersey.

The meeting concluded with a question and answer period concerning my views on pacifism and non-violent action. Captain Maher asked me how I would defend this city against invasion or violence from an intruder. I annswered his questions pointing to the possibilities of non-violent defense in such situations.

Miss Haslett and myself thanked all those present for their kind indulgence and left the hearing room at approximately 7:45.

I wish the above three page statement to be entered into my file.

Thankyou.

Respectfully,

Stephan Zahra

Central Committee for Conscientious Objectors

2006 Walnut Street, Philadelphia, Pennsylvania 19103 • LOcust 3-1480

J. BARTON HARRISON
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Co-Chairmen

KATHARINE ARNETT
Treasurer

ARLO TATUM
Executive Secretary

June 14th 1967

Stephen Zahra
18-22 21st Avenue
Astoria, N.Y. 11105

Dear Stephen Zahra:

Thanks for your telegram which was necessitated in part by the fact that I'm physically unable to accomplish all that is expected of me these days, and in part by my having seen your note saying "Enclosed is a copy of my report on the last hearing" but not the second letter with all the questions.

Unfortunately, I cannot supply to Mr. Rachlin information on his first question in regard to occupational deferments. We have had no occasion to accumulate specific data on those we counsel who receive II-As. In addition, I do not get the point. You have cited specific instances where men in the Welfare Department have been given II-As and I can see a relationship there, but not otherwise. Even if I understood, however, I could not cite cases, names, dates etc. We certainly couldn't go through our files and pull them out, for that would take several weeks.

As I've indicated, I do not know of a case where a man went into court to challenge the right of a local board to refuse to approve an alternative service assignment in the registrant's "own community." This is not a legal term in the sense of having been defined by any court, to the best of my knowledge. I'm glad you did not send a letter to Col. Omer, for questions without answers can only be irritations, and your own answers would be as good as his. Pointing out that one must live where he performs his alternative service and that that becomes his community is fun; but you can't expect Col. Omer to appreciate satire. In any event, the die is now cast - apparently as far as Selective Service goes. I do not, incidentally, rule out the possibility of Selective Service changing its mind; but it seems fairly slim.

I enclose our memo on occupational deferments. If, however, your third point meant ~~that~~ alternative service assignments "in the national interest", then the majority of the employers which have been approved for alternative service are listed in the NSBRO publication of alternative service agencies. Do you have a copy of that? I think they're available at the AFSC office or WRL office in New York; or we could send one from here, if you don't have it.

There's a little misunderstanding on the Defence Committee. This has to be set up by your friends in New York City, and CCCO cooperates with it. I mentioned, I think, that we would be prepared to send a special mailing appealing for funds, giving the nature of your case and the name and address of your Committee. I would probably also mention it in NEWS NOTES. I'm sorry to say that we cannot undertake the actual organization, as you would readily understand if you were to spend a day in the office here.

I do like your letter to the local board, and your proposed letter to Eleanor Eaton (note the spelling.) If you correct the sentence about the Defence Fund saying that CCCO has agreed to cooperate with the Defence Committee to be set up on your behalf, I see no reason why the letter could not be sent. I would wait, however, until you have actually received and refused the compulsory work order. I don't know where you got the idea that it would be issued by June 15th, and apologize if you got that impression from anything I said. In your case, since you have indicated that you will not acquiesce in a compulsory work order, National Selective Service will probably give permission to prosecute at the same time that it gives permission to issue a compulsory work order. Selective Service is an enormous bureaucracy, and such decisions involve a lot of red tape. I have the slight hope that your letter informing your local board that you would not accept a compulsory work order will cause Selective Service to back down; but it is only a tiny hope.

I do want to do anything I can to help and to work closely with you. Remember, however, that with us a telegram means that someone is locked up and needs bail, or something which is an absolute emergency. Try to be patient, remembering the almost unbearable pressure we are under here.

Sincerely,

ARLO

AT/'rs
Enc: O/D

Arlo Tatum

18-22 21st Avenue
Astoria 11105, N.Y.
June 18, 1967

Carl Rachlin, Legal Director
SEDF
150 Nassau Street
New York, N.Y.

Dear Mr. Rachlin:

I have tried, with no success, to reach you via phone during the past two weeks, so I am writing to you.

At this point no word as yet received from Selective Service. Have you sent a letter to Colonel Omer as you indicated you might?

I have enclosed the letter and memorandum recently received by me from Arlo Tatum of CCCO. It is self-explanatory.

If you have any further ideas : chores, research etc., that you feel I should perform, please call or write me.

As you know, Welfare is again in a mess with the City. I am hopeful that the snarl will resolve itself in three or less days, thus, not affecting my case very much. However, a longer snarl might result in my having to justify my siding with the Union to Selective Service, in the event that the compulsory order is received by me during that period.

What's the next step, counselor?

Sincerely

Stephen Zahra

The City of New York

DEPARTMENT OF WELFARE
250 CHURCH STREET, NEW YORK, N. Y. 10013
Telephone: 344-8700

MITCHELL I. GINSBERG, *Commissioner*

June 30, 1967

Mr. Stephen Zahra
18-22 21 Street
Astoria, New York 11105

Dear Mr. Zahra:

This will confirm your suspension without pay, effective June 20, 1967 of which you were notified by the Administrative Officer of your location, pending a final determination concerning your retention as a Case Worker I.

Very truly yours,

Mitchell I. Ginsberg
Commissioner of Welfare

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

18-22 21st Avenue
Astoria 11105, N.Y.
July 7, 1967

Selective Service System
Local Board No. 49
271 Washington Street
Brooklyn, N.Y. 11201

Dear Sirs:

This is response to SSS Form No. 158, "Order to Report for Civilian Work and Statement of Employer", recently received by me and assigning me to Hospital Work at New Jersey State Hospital in Greystone Park, New Jersey and further ordering me to report to "the local board named above at 9:30 A.M. on the 10th day of July, 1967."

It is my duty to inform you, and with all due respect, that I cannot conscientiously comply with such an order.

Further, my attorney and I feel that the above "order" is a misinterpretation of section 1660.21 paragraph A of Selective Service law. This misinterpretation has unfortunately resulted in an abuse of discretion on the part of Captain Maher and the Local Board culminating in the issuing of the above named work-order which in light of this mistake can only appear as arbitrary and capricious action.

I am refusing to obey this order then, not out of malice or a callous disregard for the law, but out of genuine belief that in this instance you are wrong and as a sensitive American I must conscientiously refuse to be a pawn of injustice. I am sure you will understand.

Once again I wish to assure you that this action on my part should in no way be interpretated as a personal attack on any of the board members or on Captain Maher. I respect all of you as human beings but it is with deep regret that I find I cannot cooperate with you on this issue.

Thankyou.

Sincerely,

Stephen Zahra

50 49 43 340

THE CITY OF NEW YORK

DEPARTMENT OF WELFARE
250 Church Street
New York, N.Y. 10013

MITCHELL I. GINSBERG
Commissioner

July 10, 1967

Mr. Stephen Zahra
18-22 21 Street
Astoria, New York 11105

Dear Staff Member,

I would like you to know that staff members who have been notified of their suspensions from the Department during the current work stoppage may request immediate consideration on an individual basis.

Depending on the nature of the charges and the employee's willingness to return to his assigned duties immediately, we are prepared to lift some suspensions. However, this is with the understanding that the employee will not be paid for the period of the suspension nor for any other period during the work stoppage in which the employee did not perform his assigned duties. This procedure has already been followed and has resulted in the lifting of a number of suspensions for employees who then returned to work.

If you would like to request an immediate review of your case, please contact Mr. Irving Damsky, Director of the Bureau of Personnel Administration, 200 Church Street, New York, N.Y.

Sincerely yours,

Mitchell I. Ginsberg

Mitchell I. Ginsberg
Commissioner of Welfare

July 25, 1967

Captain Thomas R. Maher
Chief, Legal Division
New York City Headquarters
Selective Service System
205 East 42nd Street
New York, New York 10017

Re:Stephen Mahre

Dear Captain Maher:

In accord with our conversation on July 12,1967, I am enclosing a letter, to be forwarded to Washington with Stephen Mahre's file requesting a conference with the appropriate legal officer.

Thank you for your cooperation.

Very truly yours,

Carl Mechlin

Cfmt/s
Enclosure (1)

July 25, 1967

Col. Daniel O. Omer
Deputy Director
National Headquarters
Selective Service System
1724 F. Street, N.W.
Washington, D.C. 20435

Re:Stephen Sahra

Dear Col. Omer:

I would appreciate an opportunity to confer with you regarding my client, Stephen Sahra. Hopefully it will be possible for me to meet with you in Washington at your convenience.

Very truly yours,

Carl Bachlin
Legal Director

CB:nt/h

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
1724 F STREET NW.
WASHINGTON, D. C. 20435

OFFICE OF THE DIRECTOR

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

AUG 4 1967

Mr. Carl Rachlin
Legal Director
Scholarship, Education and
Defense-Fund for Racial Equality
150 Nassau Street
New York, New York 10038

Subject: ZAHRA, Stephen A.
SS No. 50-49-43-340

Dear Mr. Rachlin:

This is in reply to your letter of July 25, 1967, in which you requested an opportunity to confer with me regarding your above-named client.

Colonel Robert T. Hays, who is in charge of matters pertaining to violations of the Military Selective Service Act of 1967, and I will be available for a conference at 10:30a.m. on August 18, 1967. I hope this meets with your approval.

For The Director,

Daniel O. Omer

DANIEL O. OMER
General Counsel

Apptmt changed to 2:30 Aug 25
w/ Col. Hays

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

CALIFORNIA HEADQUARTERS
SELECTIVE SERVICE SYSTEM
U.S. POST OFFICE
8TH AND I STREETS
SACRAMENTO, CALIFORNIA 95814

IN REPLYING ADDRESS
THE STATE DIRECTOR AND REFER TO
SUBJECT BELOW
19-6

September 18, 1967

Mr. Peter F. Franck
Attorney at Law
2890 Telegraph Avenue
Berkeley 5, California

SUBJECT: O'CONNOR, Vincent Joseph
SS No. 4 40 41 394

Dear Mr. Franck:

This will acknowledge your letter of September 7, 1967, and our telephone conversation of September 12, 1967. We attempted to obtain answers to the questions you raised so that you might have the information prior to the trial hearing scheduled for September 19, 1967. There was insufficient time to obtain the letter you desired from National Headquarters, however, we discussed the matter with them and the opinion rendered follows.

"When no agreement can be reached between a Class I-O registrant and his local board, that board first determines what particular type of work is appropriate and then prior to the issuance of a work order must, under the regulations, obtain the National Director's approval of the issuance of an order. The purpose of obtaining The Director's approval is to permit him to ascertain that the registrant concerned has been afforded procedural due process."

"Although there is no "official list" for civilian service for conscientious objectors in lieu of induction into the armed forces, there was maintained at one time in National Headquarters, a National List of some of the employers who have in the past hired I-O registrants for I-W service, after the local board had determined that such work

RECEIVED
SEP 19 1967

was appropriate. Similar lists are maintained in some State Headquarters, however this list does not include all such employers; neither is there an "official list" in the sense that a local board must approve employment with a listed employer in all cases, or that a local board is prohibited from ordering a I-O registrant to qualified service with one not listed."

"It is nothing more than a record of some of the employment which has been found appropriate by the local boards."

"Although the initial determination is made by the local board, The Director of Selective Service is frequently asked for advice or recommendation, or for approval of a local board's recommendation. In such cases, he has rather firm guidelines in his interpretation of the intension of the Congress."

"The Director feels that since the assignment to civilian work of a conscientious objector is in lieu of induction into the armed forces, he may reasonably expect some of the disruptions to his normal way of life that are experienced by the I-A registrant when he enters the armed forces. Among other things, The Director feels that the Congress did not intend that a registrant should continue his normal, civilian occupation in the comparative labor market as alternative service. The Director also feels that except in the most unusual cases, alternative service should take the registrant away from his home community, at least beyond commuting distance."

We trust the foregoing will be helpful to you. If additional information is needed then we would appreciate your putting such request in the form of specific questions for which we will then attempt to obtain an appropriate answer for each.

Very truly yours,

Thomas L. Jensen

THOMAS L. JENSEN
Lt. Colonel, USMC
Acting Deputy Director, Operations

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
1724 F STREET NW.
WASHINGTON, D. C. 20435

OFFICE OF THE DIRECTOR

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

OCT 2 1967

State Director of Selective Service
Federal Building
805 I Street
Sacramento, California 95814

Attention: Colonel Thomas L. Jensen
O'CONNOR, Vincent Joseph
~~SS No. 4-40-41-394~~
Docket No. 41279
Your Reference 19-6

Dear Sir:

This is in reply to your letter of September 13, 1967 with which you forwarded a copy of a letter dated September 7, 1967, which you received from Mr. Peter F. Frank, Attorney for the above-named registrant.

In your letter you referred to a telephone conversation of September 13, 1967, with the General Counsel. Your attention is now invited to your telephone conversation of September 18, 1967, with Colonel Robert T. Hays, Assistant to the General Counsel.

Under section 6(j) of the Universal Military Training and Service Act, as amended (now cited as the "Military Selective Service Act of 1967") and section 1660.1 of the Selective Service Regulations, conscientious objectors are assigned to such civilian work "as the local board may deem appropriate." The regulations restrict such assignments to employment by the Government or by certain nonprofit organizations, but the purpose of this restriction is to assure that assignments are not made in other areas, and it does not require local boards to approve all emplo ment by the Government or by the nonprofit organizations. The approval of the National Director is required by regulations only when no agreement as to the type of work to be performed can be reached by the registrant, the local board, and a state Headquarters representative.

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

The local boards, in determining appropriate work, will make their determinations on an individual case basis. Although the determination is made by the local board, the Director of Selective Service is frequently asked for advice or recommendation, or for approval of a local board's recommendation. In such cases he has rather firm guidelines in his interpretation of the intention of the Congress.

The Director feels that since the assignment to civilian work of a conscientious objector is in lieu of induction into the Armed Forces, he may reasonably expect some of the disruptions to his normal way of life that are experienced by the I-A registrant when he enters the Armed Forces. Among other things, the Director feels that the Congress did not intend that a registrant should continue his normal civilian occupation in the competitive labor market as alternative service. The Director also feels that except in the most unusual cases alternative service should take the registrant away from his home community, at least beyond commuting distance.

Defense counsel's concern in the case of the above-named registrant seems to be in connection with the operation of the Civilian Work Program for Conscientious Objectors, particularly with respect to the use of so-called "official lists" of available civilian assignment.

Although there is no "official list" for civilian service for conscientious objectors in lieu of induction into the Armed Forces, there was at one time in National Headquarters a list of some employers who have hired I-O registrants for I-W service, after the local board had determined that such work was appropriate. However, this list did not include all such employers. Neither was it an "official list" in the sense that a local board must approve employment with a listed employer in all cases, or that a local board is prohibited from ordering a I-O registrant to qualified service with one not listed. It was nothing more than a record of some of the employment which had been found appropriate by local boards in the past. It is our understanding that similar lists are maintained in some State Headquarters for Selective Service but these, too, are not designed to restrict local boards to particular employers; rather, they are for the information of local boards which may wish to know where I-W registrants have been employed and where work will be available for twenty-four consecutive months. It also is a means by which boards may know the names of employers who

are willing to accept responsibility as employers of I-W registrants, giving reports to the Selective Service System with respect to such matters as whether the registrant's work is satisfactory or whether he leaves his employment before the twenty-four month period has expired.

For The Director,

Daniel O. Omer

DANIEL O. OMER
General Counsel

PETER F. FRANCK
Attorney at Law
2890 Telegraph Avenue, Berkeley 5, California. THornwall 5-4123

JEANETTE A. HERMES

FRANCIS HEISLER
Of Counsel

October 26, 1967

Our File: O'Connor, Vincent J.

Thomas L. Jensen, Lt. Colonel, USMC
Acting Deputy Director, Operations
Selective Service System
United States Post Office
8th and I Streets
Sacramento, California 95814

Re: O'CONNOR, Vincent Joseph
SS No. 4 40 41 394

Dear Colonel Jensen:

I am in receipt of your letter of last month in the captioned matter. You had undertaken to obtain for me the information requested in my letter of September 7, 1967, as amplified in our telephone conversation of September 12, 1967. This was to serve in lieu of the previously scheduled deposition which you cancelled.

I feel that the information provided was not fully responsive to the questions asked, and would like to put further questions prior to seeking a discovery order of the District Court.

1. With respect to the "National list of some of the employers who had in the past hired one of the registrants..." which you state the national office has maintained in the past, during what years was the list maintained, what was the purpose in maintaining the list, why was it discontinued.

2. You state "similar lists are maintained in some State Headquarters". Is such a list maintained in your Headquarters?

3. You state that the National Director of Selective Service "has rather firm guidelines in his interpretation of the intension (sic) of the Congress". What are these guidelines?

4. You state "the Director feels that since the assignment of civilian work of a conscientious objector is in lieu of induction into the Armed Forces, he may reasonably expect some of the disruptions to his normal way of life that are experienced by the I-A registrant when he enters the Armed Forces". It is not clear to me the relationship of the reasonable expectation of the registrat is to the requirements of law. Is there a statutory basis for this connection?

5. You go on to say "the Director feels that the Congress did not intend that a registrant should continue his normal civilian occupation in the competitive labor market as alternative service." Does the Director have reference to any legislative history of the statute in his reading of Congressional intent? Can he cite Committee Reports, floor debates, etc., so indicated?

6. You conclude by saying "the Director also feels that except in the most unusual cases, alternative service should take the registrant away from his home community, at least beyond commuting distance".

a) What is the basis of the feeling quoted, i.e., is there any basis for it in the statute or the legislative history;

b) What kind of case would be considered "unusual" in this respect?

7. With respect to all of the foregoing, I would ask whether the Director has any evidence that the civilian work program in any way advances or fulfills the purposes and goals of the Selective Service System.

8. What alternative service placements have been made in the post World War II period for medical doctors classified I-O?

9. Have any individuals been removed from their alternative service placements by order of the Selective System after commencement of employment? If so, how many and for what reasons?

10. Is it possible for an individual to do, as his alternative service, work which is not defined as an employment with an organization, for example, free lance community organizing?

11. The pulbication "Outline of Historical Background of Selective Service in Cronology" authored by the Director, at page 30 he states "Flexible deferment policies provided for in the law permits Selective Service not only to help meet todays manpower needs, but to anticipate tomorrows, to adapt manpower policies to changing needs as they arise...". Does this reference to manpower needs refer to the needs of the Armed Forces alone, or does it refer also to the Nation's requirements with regard to the makeup of the civilian labor force?

12. In the same publication cited above, the Director states "the approach was, rather, a positive effort to meet the Nation's manpower problems by channeling men through deferment and prospective deferment into vital civilian endeavor". (page 30) Please indicate what the statutory authority for this channeling function is.

13. Further, in regard to the channeling function, please indicate who makes the decision as to which civilian endeavors need to have men channeled into them, and by what process this decision is arrived at.

14. In a publication entitled "Channeling", Colonel Bernard T. Franck, III, Chief of the Office of Legislation and Liason of the Selective Service System, wrote "It is in dealing with the other millions of registrants (those who are not inducted into the Armed Forces) that the system is heavily occupied, developing more effective human beings in the national interest". Please indicate (a) what is meant by the term "more effective human beings".

15. Please indicate what legislative authority there is for the channeling function of Selective Service as outlined by Colonel Franck.

16. Colonel Franck has written that "the club of induction has been used to drive out of areas considered to be less important...the individuals who did not or could not participate in activities...essential to the defense of the Nation". (i.e., those individuals not drafted) Please state what areas have been considered to be less important, and how that determination is made.

In addition to providing the foregoing information, it will be greatly appreciated if you will supply me with copies of any Selective Service memoranda, guidelines, or other documents in which the operation of the Civilian Work Program, its goals, purposes, criteria or history are discussed. If any of these are in short supply, I will be glad to make appropriate notes or copies and return them to you promptly.

In view of the impending trial date in this matter, your early attention to it will be much appreciated.

Thank you very much for your cooperation.

Very truly yours,

Peter F. Franck

PFF/mw
cc: Lewis B. Hershey, General
Director Selective Service
Washington, D.C.

Paul G. Sloan, Esq.
Assistant U.S. Attorney General.

NATIONAL HEADQUARTERS
SELECTIVE SERVICE SYSTEM
1724 F STREET NW.
WASHINGTON, D. C. 20435

OFFICE OF THE DIRECTOR

ADDRESS REPLY TO
THE DIRECTOR OF SELECTIVE SERVICE

NOV 1967

AIR MAIL

Acting State Director of Selective Service
Federal Building
865 I Street
Sacramento, California 95814

Subject: O'CONNOR, Vincent Joseph
SS No. 4-40-41-394
Your Reference: 19-6

Dear Colonel Jensen:

Reference is made to your telephone conversation of November 13, 1967, with Colonel Robert T. Hays my Assistant General Counsel regarding the letter of October 26, 1967, you had received from the above-named registrant's attorney. You requested assistance in preparing your reply thereto.

It should be pointed out to defense counsel and the court if possible that these questions propounded to you are so general in nature that specific reply is practically impossible. In our opinion they constitute an obvious "fishing expedition".

Mr. Frank inquired as to how long a list of approved employers was maintained in National Headquarters and why it was discontinued. The seventh paragraph of our letter to you of October 2, 1967, discusses in detail the temporary nature of any "list" maintained either in National Headquarters or in the various State Headquarters.

When the Conscientious Objector Work Program was initially approved by Congress through the 1951 amendments, National Headquarters, to assist local boards in getting such a program "off the ground", did everything possible to ascertain the names and addresses of organizations who met the criteria outlined in Part 1660 of the regulations and who were willing to participate in the program on a voluntary basis by employing conscientious objectors. From time to time when information was received that local boards had determined work with other organizations not on the national list was appropriate for individual

INSURE FREEDOM'S FUTURE—AND YOUR OWN—BUY UNITED STATES SAVINGS BONDS

registrants, those organizations were included in the advisory list. When an organization stated that it no longer wished to participate in the program its name was removed from any previously prepared list. No such a list has been maintained in an up-to-date status for a number of years as there has not appeared to be any need for such advisory information. Local boards have long since become aware of the criteria outlined in Part 1660 of the regulations.

Mr. Frank in his letter to you asked numerous questions as to what are the "firm guidelines" referred to in our letter of October 2, 1967. There is enclosed herewith a copy of the Conscientious Objector Work Program Debate on Conference Bill To Amend Selective Service Act May 31, June 1 - June 7, 1951. We have underscored in red certain portions that the Director considers definite "guidelines". We feel that this enclosure will assist you in replying to Mr. Frank's letter.

Inquiry was also made as to why the Director takes the position that a conscientious objector should normally be assigned away from his home community, at least beyond commuting distance. This is provided for in section 1660.21(a) of the Selective Service Regulations.

There is little else that we can add to our previous letter to you discussing Mr. Frank's attempts first to obtain the personal testimony of General Hershey and secondly to take his deposition. No relationship has been shown between the above-named registrant's case and the information attempted to be elicited through the various "fishing expeditions" referred to herein.

For The Director,

DANIEL O. OMER
General Counsel

Enclosure

CALIFORNIA HEADQUARTERS
SELECTIVE SERVICE SYSTEM
FEDERAL BUILDING
805 I STREET
SACRAMENTO, CALIFORNIA 95814

November 20, 1967

IN REPLYING ADDRESS
THE STATE DIRECTOR AND REFER TO
SUBJECT BELOW

19/6

Mr. Peter F. Franck
Attorney at Law
2890 Telegraph Avenue
Berkeley 5, California

SUBJECT: O'CONNOR, Vincent Joseph
SS No. 4 40 41 394

Dear Sir:

This will acknowledge your request of October 26, 1967. I apologize for the delay in answering your letter but I was in Los Angeles during the week of November 6, 1967 and was therefore unable to take any action toward providing the information you desire.

In my absence I asked for assistance from our National Headquarters. I am attaching a copy of a letter from Colonel Omer together with a copy of the Conscientious Objector Work Program, Debate on Conference Bill, To Amend Selective Service Act, May 31, June 1 - June 7, 1951. I am also attaching a copy of a letter received from National Headquarters dated October 2, 1967, a date subsequent to my previous letter to you on September 18, 1967.

I trust the foregoing will be helpful to you.

Very truly yours,

THOMAS L. JENSEN
Lt. Colonel, USMC
Acting State Director

Attach.

PETER F. FRANCK
Attorney at Law

2890 TELEGRAPH AVENUE
BERKELEY, CALIFORNIA 94705

(415) 845-4123

DOUGLAS J. HILL

FRANCIS HEISLER
Of Counsel

February 14, 1968

Carl Rachlin, Esq.
Legal Director
Scholarship, Education and Defense
Fund for Racial Equality
150 Naussau Street
New York, New York

Dear Mr. Rachlin:

I have been interested to see that you are handling the Steven Zahara case involving the question of alternative service. I have a similar case, Vincent O'Connor, in which we are also challenging alternative service, raising the issue of channeling.

As I understand it, your client specifically sought approval of his job with the Welfare Department as his alternative service. This would seem to present a somewhat stronger case than ours, in that Mr. O'Connor took the position that no service done under compulsion could be squared with his conscientious objection to participation in war, any war program, or coerced activity of this sort by the Government.

For your information, I enclose various pleading which Vince has had duplicated.

We have spent considerable time in a relatively fruitless attempt at discovery, formal and informal, to determine the criteria used for the administration of the alternative service program, and the purposes which Selective Service thinks it serves. As I am sure you know, its justification, as against an attack under the Thirteenth Amendment, is that it is necessary to maintain the moral of the troops. Without this justification, it would seem that it would violate principles of substantive due process, since it would bear no reasonable relation to any power granted to the Congress. A rather extensive correspondence with Selective Service failed to produce much useful information. We, therefore, issued a subpeona to General Hershey, on the basis of which we proposed to take his deposition in Washington. On instructions from the Justice Department, The United States Attorney here moved to quash this subpeona. The motion was granted without opinion and without comment

from the Court. This is now on appeal to the Ninth Circuit.

Since, in each letter, they let go with a small bit of information, I am enclosing photostats of part of the correspondence in the event that it may b5 of some use to you in your case. I would be very glad to hear from you with regard to the progress on your case, and any thoughts you may have as to issues which should be raised in these cases.

Very truly yours,

Peter Franck

Peter Franck

PF:w
Enclosures

ZAHRA DEFENSE FUND
c/o THE CATHOLIC WORKER
175 CHRYSTIE ST.
NEW YORK, N. Y. 10002

March 16, 1968

Dear Mr. Rachlin,

My new home phone is 728-4275 and it is unlisted. I continue to live at the same address 18-22 21ST AVE, ASTORIA 11105, N.Y.

This information is for your records should you need to reach me at once.

Thank-you for your continued assistance. We have thus far collected about $450.00 in the Defence fund.

Sincerely,
Stephen Zahra

Zahra

ZAHRA DEFENSE FUND
c/o THE CATHOLIC WORKER
175 CHRYSTIE ST.
NEW YORK, N. Y. 10002

May 8, 1968

Dear Mr. Rachlin:

The following information received by my defense fund may be of interest to you:

1. Marty Greenstein, caseworker in Jamaica Welfare center #54, SSS classification 1-O, is being told by his draft board No. #55A, at 29-28 41st Ave, Long Island City, that he must find employment THIRTY miles away from his place of residence. (and not fifty miles, as we are given to understand is General Hershey's policy)

2. Frank Banister, who resides with his wife and family in NYC at 87-89 Columbia St., was given permission by his Draft Board in Cleveland to perform alternative service as a caseworker in Prospect welfare center in Brooklyn. His wife and family have always lived in New York, but because his home was originally in Cleveland, permission was granted. However, the question still remains is Mr. Banister now discommoded? Mr. Bannister indicates a willingness to help us in any way you deem wise.

3. Dennis Chaudron, caseworker at Dykman W.C. is undergoing similar case as ours, only govt. has taken no action as yet. His case is being handled by the E.C.L.U.

4. Enclosed find N.Y. Times article re: Professor at University ordered to perform Janitor's duties as alternative service. Selective Service rescinded order to Dr. Brann. (article enclosed)

Thankyou for your continued assistance. There is now approx. 1150.00 in defense fund, a far cry from needed 8000.00 but a good start.

Sincerely,

Stephen Zahra

The New Jersey State Hospital
Greystone Park, N. J. 07950
(201) 538-1800

June 28,1968

Mr. Stephen A. Zahra
18-22 21st Avenue
Astoria, New York 11105

Dear Mr. Zahra:

This is to advise you that your application for employment at this hospital in the title of Social Worker 2 has been accepted and that a commitment has been made to start work. The date upon which you will begin work is to be determined by the amount of notice to be given to your present employer.

Very truly yours,

Richard E. Winans
Personnel Director

REW:KNM:kv

July 2, 1968

Selective Service System
Local Board #49
271 Washington Street
Brooklyn, New York 11201

Re: Stephen Zahra

Dear Sirs:

Please be advised that the above named applicant for work at this hospital has been given a commitment to begin his employment as a Social Worker 2 on Monday, July 8, 1968. He is to report to the Personnel Department at 8:30 a.m.

Very truly yours,

Richard E. Winans

Richard E. Winans
Personnel Director

REW:KNM:sv

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

Mr. Stephan Zahra
18-22 21st Avenue
Astoria, New York 11105

July 29, 1968

Dear Stephan:

We were happy to be of service to you over the past year and a half. Our out of pocket expenses were $542.00. This does not include any amounts for services. Zala advises me that you have successfully raised something over twelve hundred dollars for your defense. Zala also tells me that you desire the balance to be used for related legal expense.

With this we are most happy to oblige. And we accept the gift gratefully.

With best regards,

Carl Rachlin

Carl Rachlin

Contributions are deductible for income tax purposes

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The Stephen Zahra Defense Fund

c/o The Catholic worker
175 Chrystie St.
New York, N. Y.
August 22, 1968

Mr. Carl Rachlin
Scholarship, Education and Defense Fund
164 Madison Ave.
New York, N. Y.

Dear Mr. Rachlin:

In reply to your letter of July 29, 1968,we note your statement that the out of pocket expenses which your organization has borne in defending Mr Stephen Zahra, who was indicted over a Selective Service issue, amounted to $542,00. Accordingly, we are enclosing a check for that amount.

Your letter also points out that this fee does not include any service charges. We are deeply appreciative of all that you and your organization has done to defend Stephen, and we wish to make an additional contribution to your organization of $708.00. We understand that this money will be used in defending cases involving Selective Service matters in connection to the present war in Vietnam. We hope that this money will be useful in helping some other young man to resist this immoral and illegal war.

Once again, our deep appreciation for all you have done and we wish you every success in the future.

Yours very truly,

Frank Lonergan

Frank Lonergan

Treasurer

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

September 6, 1968

Mr. Frank Lonergan, Treasurer
Stephen Zahra Defense Fund
c/o The Catholic Worker
175 Chrystie Street
New York, New York

Dear Mr. Lonergan:

We are terribly grateful to you and the Stephen Zahra Defense Fund for the donation to Scholarship Education and Defense Fund for Racial Equality. Rest assured this money will be used in a way that will be gratifying to Stephen Zahra, yourself, and the Fund.

Please feel free to call upon us whether it be in problems of young people such as that had by Stephen Zahra or any problem relating to the discriminated against and the poverty stricken.

With many thanks,

Very truly yours,

Carl Rachlin
Legal Director

CR:jmj

Contributions are deductible for income tax purposes

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W-2

Zahra

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
NON-RESIDENCE WELFARE CENTER
119 WEST 31ST STREET
NEW YORK, N. Y. 10001

IN REPLY REFER TO
554-
TELEPHONE NO.

Dear Mr. Rachlin:

I would like to clarify some things since I never seem able to talk to you for more than half a minute. This is important to me. Please read this: When I first told you about my case you said "I don't see why ACLU refused the case." ACLU being in this case, Mr. Levine. Now many months later, AFTER my my letter to Mr. Pemberton (who sent a memo to Mr. Levine who gives me the impression that he was annoyed at my initiative in writing Mr. Pemberton) and AFTER the Friends refused me aid, I again contacted Mr. Levine (after telling you I would do so) who then contacted you.

Since I am having such a great deal of difficulty in raising money for the Defense, I thought that if ACLU and yourself(I understand you are ~~the~~ ON THE Board of Directors) were both involved, it might reduce the cost by several thousand. It was never my intention to imply that Mr. Levine doesn't know what he is about, although that might be the case, given your opinion that ACLU should be involved. Now, do you or don't you feel that they should be involved? Please answer this question, and that will clear up everything.

Thankyou for your faith in me and all of the work you have put in so far on this case. I will never give up this fight and you are the only attorney who seems to think I have a valid grievance here. I am still working on the 347.00 I owe you thus far, and hope to

have at least 100.00 by Christmas to give you.

Once again, Thank you. Please answer this letter.

Sincerely,

Stephen Zahra

P.S. IF YOU FEEL THAT ACLU SHOULD BE INVOLVED, DO YOU WANT THEM INVOLVED? IF YOU DO, WHAT CAN WE DO ABOUT IT?

S Zahra

Mr. Rachlin:

MY HOME PHONE: 728 4275

Office Phone: 554 8115-6-7-8

I would like very much to discuss the meaning of the enclosed indictment with you.

1. What happens on April 4 ? Is a trial date set? Is bail set? How much money shall I bring? There is approx. 500.00 in the defence fund. Must I bring cash?
2. Perhaps we could arrange a meeting shortly, preferably during NON-office hours.

Sincerely,

Stephen Zahra

Zahra

6712281540

Dear Mr. Rachlin:

I am in the process of writing my fund-raising material, which, if everything goes according to schedule, will be printed and sent out early in January. I will send you a copy of the material as soon as it is ready.

Or perhaps I shall bring it to you if we meet next week. I wanted to meet with you to further discuss some ideas I had regarding my defense. I mentioned to you, on the phone the other day, the case of Vincent O'Connor currently pending trial in San Francisco for refusing alternative service.

The basis for Vincent O'Connor's refusal to accept conventional alternative service is an argument that Selective Service isnnot empowered to control the civilian manpower pool, to direct the career choices of civilians or to order civilians to perform certain kinds of work. The brief for his case, prepared by Berkeley attorney Peter Franck, challenges the entire concept of "channeling" on a variety of constitutional grounds. (I uderstand)

I have written to his attorney and to his defense fund but have so far received no response. If you consider it worthwhile, perhaps you will write to him.

If I understand the drift of your remarks on the phone, you feel that our arguments as originally presented (based on 1660.21) contradict the above arguments. You feel that you cannot at the same time argue that Selective Service obey its own laws (1660.21) and that the concept of Alternative Service is illegal.

What I fail to understand is why you cannot argue the case on several grounds. I am at this time undergoing a self-examination as to whether my cooperation with the system in accepting a 1-O classification originally, can at all be justified. I am convinced that it cannot. But I will not upset the applecart now, for a variety of reasons which you are aware of. For one, sheer curiosity. For another, there is time LATER to further intensify my position as a non-cooperator.

My question and point of discussion with you is the following: Is it possible to contend that 1) Alternative Service is Illegal (V. O' Connor's arguments----I have not read the brief) and that MOREOVER even if it were legal (in the general sense) It is still 2) Illegal IN MY CASE by their very own laws (in the specific sense).

I hope we will be able to meet next week (Jan 2-5). I will call for an appointment.

Thankyou for your continuing aid.

Sincerely An Peace,

Stephen Zahra

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

Keverse

MITCHELL I. GINSBERG
Commissioner

Name of Staff Member Stephen Zahra

Civil Service Title Cswkr I

Date 6-21-67 Time 2:20 ~~A.M.~~ P.M.

This is to inform you that you will not be paid for 6-19-67 (date) because of your failure to perform your assigned duties on that date, and you will not be paid for any subsequent days on which you fail to perform your assigned duties.

Director (signature) S.C.Stern

Location Non-Residence WC

Form M-589m
6/20/67

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE

MITCHELL I. GINSBERG
Commissioner

Name of Staff Member Stephen Zahra

Civil Service Title Caseworker I

Date June 20, 1967 Time 3:30 P.M.

By authority of Commissioner Mitchell I. Ginsberg you are hereby notified that you are suspended, effective immediately, because of your misconduct in failing and refusing to carry out your assigned duties and in interfering with other employees of the Department of Welfare in the performance of their assigned duties.

You are requested to leave these premises immediately. Your failure to do so may subject you to arrest.

Until further notice you are not authorized or permitted to enter upon any Department of Welfare premises.

Director (signature) S. Clinton Storm

Location NON-RESIDENCE WELFARE CENTER

Form M-589h
Rev. 6/20/67

SELECTIVE SERVICE SYSTEM

Form approved.
Budget Bureau No. 33-R129.

ORDER TO REPORT FOR CIVILIAN WORK AND STATEMENT OF EMPLOYER

Selective Service System
LOCAL BOARD NO. 49
271 Washington Street
Brooklyn, N. Y. 11201

(LOCAL BOARD STAMP)

June 27, 1967
(Date of mailing)

To STEPHEN (First name) ALBERT (Middle name) ZAHRA (Last name)

50 49 43 340
(Selective Service Number)

Mailing address 18-22 21st Avenue (Street and number) Astoria (City) New York (State) 11105 (Zone)

Having been found to be acceptable for civilian work contributing to the maintenance of the national health, safety, or interest you have been assigned to Hospital Work (Type of work)

located at New Jersey State Hospital, Greystone Park, New Jersey (Name and address of employer)

You are ordered to report to the local board named above at 9:30 A. m. (hour) on the 10th day of July, 19 67, where you will be given instructions to proceed to the place of employment.

You are ordered to report for employment pursuant to the instructions of the local board, to remain in employment for twenty-four (24) consecutive months or until such time as you are released or transferred by proper authority.

You will be instructed as to your duties at the place of employment.

Failure to report at the hour and on the day named in this order, or to proceed to the place of employment pursuant to instructions, or to remain in this employment the specified time will constitute a violation of the Universal Military Training and Service Act, as amended, which is punishable by fine or imprisonment or both.

Marilyn Fox
(Clerk or Member of the Local Board)

STATEMENT OF EMPLOYER

The registrant identified above reported for civilian work on the ..... day of ....., 19 ...., to

Name of Employer .....

Address of Employer ..... (Street address) (City) (Zone) (State)

.....
(Signature of employer or agent)

.....
(Title)

SSS Form No. 153 (Revised 11-13-61) (See instructions on reverse side) GPO 816568

Appendix B October 20, 1965

MEMORANDUM REGARDING THE RECENTLY ENACTED FEDERAL LEGISLATION MAKING UNLAWFUL THE DESTRUCTION OF ONE'S SELECTIVE SERVICE REGISTRATION CERTIFICATE ("DRAFT CARD")

The recent statute supplements a previous statute which made unlawful evasion of the draft and, through a prohibition of any violation of regulations promulgated under the 1947 statute, a number of other things, including the failure to carry one's draft card at all times. The previous statute, 50 USCA §462, has been the basis for prosecution for failure to carry the draft card in only two reported instances, apparently: United States v. Kime, 188 F 2d 677 (7th Cir., 1951)(conviction sustained), and United States v. Hertlein, 143 F Supp 742 (E.D. Wis., 1951)(defendant convicted). In the first of these it appears that the defendant's legal arguments were based on freedom of religion, and no other possible constitutional or interpretive claims are asserted. The Court said:

> "A party's religious belief cannot be accepted as a justification for conduct which is made punishable by the law of the land. To permit such justification would be to make the professed doctrine of religious belief superior to the law of the land and in effect would permit every objector to become a law unto himself."

In the second case a conviction on a charge of failing to carry a registration certificate was entered in reliance on Kime.

50 USCA §462 provides maximum penalties of five years imprisonment or $10,000 fine, or both. From newspaper reports it appears that the maximum penalties under the new statute are $5,000 fine, or five years, or both.

The penalties in these latter statutes should be compared with that provided in 4 USCA §3, prohibiting the defiling of the U. S. flag. That statute, which applies only to the District of Columbia, provides that the crime shall be a misdemeanor, punishable by $100 fine, or 30 days, or both.

Comment:

The recent statute making it a crime to destroy one's draft card is undoubtedly unnecessary, in the light of the previously existing statute, as interpreted by the two decisions.

It is believed that there is really no utilitarian purpose for requiring registrants to carry their draft cards. This is not a duty expressly created by the Congress, and thus far, the Selective Service has never had to show any purpose for that requirement. In these circumstances two things seem likely:

1. The regulation requiring the carrying of one's draft card is very susceptible to successful challenge as an unnecessary and unauthorized requirement which, by the bootstraps of the statute, now has the appearance of being a lawful requirement.

2. Both the carrying of the card and the proscription against its destruction are restraints on the individual's conduct for purposes of requiring a symbolic showing of one's recognition of the duty to be available for service in defense of one's country, and a restraint upon any expression of resistance to the assumption of that duty through the destruction of the draft card.

If we set aside the question of the requirement for carrying the draft card for a moment, and at the same time forego the argu-

ment that this combination regulation-statutory duty makes unnecessary the statute prohibiting the destruction of the draft card, there are still serious objections to that statute.

First, it seems clear that the legislative history of the statute would establish that the enactment was in no way associated with facilitating the administration of the draft laws.

Second, compared with the only other statute prohibiting symbolic acts of negation, the punishment is extremely severe. In fact, the punishment seems unduly severe whether compared with the flag-defilement statute or not. Regarding this point, one should note Weems v. United States, 217 U.S. 349, 371, 382 (1910), condemning a Philippine statute prescribing imprisonment of 12 to 20 years for entry of known false statements in a public record, and Trop v. Dulles, 356 U.S. 86 (1958), involving the statute divesting those who deserted in time of war of their citizenship. Brennan's concurrence, 93-114, especially at 114, is particularly appropriate. See also Brennan's concurrence in Kennedy v. Mendoza-Martinez, 372 U.S. 144, 187 (1963).

However distasteful we may find an act which in its physical description is properly described only by the term "destruction," it must not be forgotten that the act can be, and in this case obviously is, a means of expression. If the ephemeral argument that the draft card is government property is the rationale for likening this to the destruction of other, utilitarian, property, it seems likely

that the harsh penalties will force an abandonment of that finely spun web. The essence of legislative power, state or federal, lies in legitimate legislative purpose. After considerable thought, it appears that the only reason the draft card has any importance is because the Congress has invested it with importance. If it can be done to a draft card it can be done to the picture trading cards children get with bubble gum. The point is that legislative protection of this piece of paper must meet a standard of usefulness before the Congress can, with or without the concept of federal ownership, make its destruction punishable.

The previous argument is the old one of "substantive" due process. There has earlier been the suggestion of a "cruel and unusual punishment" question here. Finally, one must recognize that this act has within it some elements of free speech. Lastly it should be mentioned that even before Justice Goldberg's recent exhumation of it, the 9th Amendment had been held to protect one right: political activity. In the light of this, it appears that there are serious civil liberties questions in this recent statute.

Conscientious Objector Work Program
Debate on Conference Bill
To Amend Selective Service Act
May 31, June 1 - June 7, 1951

Congressional Record--Senate
May 31, 1951

Mr. RUSSELL. If the Senator will indulge me, I should like to read further. In doing so I shall touch on the point he has brought up. I will deal with it in a moment, if the Senator will be so kind as to indulge me.

CONSCIENTIOUS OBJECTORS

The Senate bill provided that conscientious objectors who are opposed to military service in any form should be required to do work of national importance under civilian control. In other words, Mr. President, the Senate bill contained the same provisions which was in effect for conscientious objectors during World War II.

The House amendment continued the procedure provided in the existing law--I refer to the 1948 act, which has been once extended--that is, that conscientious objectors simply would be deferred. Both Houses receded from their original positions and adopted a plan whereby conscientious objectors who are opposed to military service in any form may be required by their local boards to perform for a period equal to the prescribed period of induction such civilian work contributing to the national health, safety, or interest, as the local board may deem to be appropriate. In the event the individual fails to comply, he is subject to prosecution under the penalty section of the act.

June 1, 1951

Mr. RUSSELL. I do not know that the language would specifically prevent it. However, I would be less than frank if I did not state to the Senator that it was the intention of the conferees not to have camps of that nature established on a national scale. The House conferees were very much opposed to the Senate provision, as were various organizations, such as the Society of Friends and others, who are interested in the question of conscientious objectors. We, therefore, arrived at this compromise, which leaves the question at the local level and permits draft boards to defer a person who is engaged in work which contributes to the maintenance of national health, safety, or interest, for a period of 24 months.

I may say that conscientious objectors have considerable advantage over men who are inducted into the Army. A man who is inducted into the Army serves 24 months. Upon discharge, he remains in the reserves for 6 years. Conscientious objectors on the other hand, after 24 months of useful work, owe no further responsibility under the bill.

Mr. CASE.

* * * * * * * * *

I should certainly hope that the language of the bill would permit draft boards, or whoever made decisions in such instances, to see to it that conscientious objectors, who are granted deferment and have the benefits of the more lenient treatment which the Senator from Georgia has described, should at least be required to do work which is definitely in the national interest, and not work which merely improves their economic status and their own pocketbooks.

Mr. RUSSELL. The Senator from South Dakota makes a very strong argument in behalf of the provision of the bill as it was passed by the Senate. The Senate members of the conference committee undertook to make the same argument, although perhaps not so well as the Senator from South Dakota has made it, but we were unsuccessful. The House bill had no provision whatever with the respect to conscientious objectors. It merely provided for their blanket deferment. Not only could conscientious objectors have remained on their farms and worked there, but they were not even compelled to work on the farms. They could have sat around pool rooms or stood around street corners, which would certainly have aggravated the feelings of the men who were compelled to go into the service, as the Senator from South Dakota has said. However, we could not prevail upon the House conferees to accept the Senate provision. This provision is another one on which we were compelled to compromise.

Mr. RUSSELL. I think there is no question that considerable leeway is given the several draft boards in determining the type of work that such persons shall do and the measure of its contribution to the national health, safety or interest. I regret that I cannot in all fairness and honesty assure the Senator from South Dakota that it is my interpretation of this measure that such persons could be placed in camps, as was done in World War II. Such a provision was contained in the bill as passed by the Senate, but we were unable to achieve the inclusion of that provision in the Conference report. However, we did tie it in with deferments for essential occupations. The Senator knows that at the present time there can be some deferments for men who are in essential occupations.

In my judgment, the draft boards in the areas to which the Senator refers will see to it that some recognition is given to the fact that these persons have been accorded a deferment owing to their religious convictions.

Mr. SALTONSTALL. I should like to call the attention of the Senator from Georgia and the Senator from South Dakota to the fact that the conference report contemplates the service of 3,500,000 men, whereas in World War II 14,000,000 men were in the service. I think the point was raised in the committee of conference that the question of establishing camps, and so forth, for the number of conscientious objectors who would be drafted in connection with the drafting of a total of 3,500,000 men is quite different from the

question of establishing such camps in connection with the drafting of 14,000,000 men.

It is my opinion that the local draft boards will have to determine whether the jobs held by such conscientious objectors will help in the war effort. If the boards determine that such jobs will help with the war effort or the war work, then those who hold such jobs and who are conscientious objectors will be allowed to remain in that status; but if such is not determined to be the case, such persons must either suffer the penalties or transfer to such jobs.

ongressional Record--House
June 7, 1951

Mr. MANSFIELD.

* * * * * * * * * * *

I note that there are no work camps for conscientious objectors, as was the case during World War II, and I am informed that the reason for this is that the number of conscientious objectors is so small-approximately 12,000--that it is not enough to warrant the creation of national work camps to place them in during the 24 months of their service. The conferees have arrived at a compromise on the question of conscientious objectors which leaves the question at the local level and permits draft boards to defer a person who is engaged in work which contributes to the maintenance of national health, safety, and interest for a period of 24 months. It appears to me, Mr. Speaker, that this gives a great advantage to conscientious objectors over men who are inducted into the service. A man is inducted into the Army for 24 months' service and, upon discharge, remains in the Reserves for 6 years. Conscientious objectors, on the other hand, after 24 months of use-ful work, owe n o further responsibility under the bill. This, I maintain, is decidedly unfair to those who are inducted into the service. Then there is the question of the Mennonites, who have been causing a great deal of concern in various parts of my State of Montana, and have been the result of considerable correspondence to me on the subject. I have urged the House Armed Services Committee to give this matter every possible consideration and to work out a solution which could be workable and which would not put to disadvantage those who were inducted into the service. However, I understand this conference report to say the Mennonites are given a straight deferment after induction and an assignment to work at a local level. They would be permitted the privilege of continuing in their normal occupation of farming for example, and perhaps be able to acquire additional lands and generally improve their economic status, while boys in the same farm communities are called upon to abandon their farms and even sell their livestock at a forced sale when livestock is not ready for market. This, as you can well understand and justifiably so, creates a great deal of feeling. I had hoped the conference report would permit draft boards, or whoever made decisions in such instances, to see to it that the conscientious objectors who are granted deferments and have the benefits already described would at least be required to do work that is definitely in the national interest and not work which merely improves their economic status and their own pocketbooks. While the Mennonites are conscientious, hardworking people, they do not contribute to the Armed Forces of the United States in time of national emergency. These people, like the rest of the population, should expect that their normal activities would be sacrificed to some extent in the national interest so that they would not be avoiding all national service.

I wish to express the hope that the Armed Forces Committee will be able to work out a program whereby those who obtain deferment on these grounds may be made more useful in contributing to the national interest during this emergency. The present report does not commend itself to the average person.

(Channeling is one of a series of monographs and short essays contained in the Selective Service Orientation Kit. The Kit, formerly available from Captain Pascoe, USN (Ret.), Chief of Public Information for Selective Service National Headquarters in Washington, D. C., has recently been withdrawn from circulation to the public.

This essay has been previously discussed in the SDS publication New Left Notes (January 20, 1967) and in The New York Review of Books (April 6, 1967). Dec'67 issue of Ramparts

CHANNELING

One of the major products of the Selective Service classification process is the channeling of manpower into many indeavors, occupations, and activities that are in the national interest. This function is a counterpart and amplification of the System's responsibility to deliver manpower to the armed forces in such a manner as to reduce to a minimum any adverse effect upon the national health, safety, interest, and progress. By identifying and applying this process intelligently, the System is able not only to minimize any adverse effect but to exert an effect beneficial to the national health, safety, and interest.

The line dividing the primary function of armed forces manpower procurement from the process of channeling manpower into civilian support is often finely drawn. The process of channeling by not taking men from certain activities who are otherwise liable for service, or by giving deferment to qualified men in certain occupations, is actual procurement by inducement of manpower for civilian activities which are manifestly in the national interest.

While the best known purpose of Selective Service is to procure manpower for the armed forces, a variety of related processes takes place outside delivery of manpower to the active armed forces. Many of these may be put under the heading of "channeling manpower." Many young men would not have pursued a higher education if there had not been a program of student deferment. Many young scientists, engineers, tool and die makers, and other possessors of scarce skills would not remain in their jobs in the defense effort if it were not for a program of occupational deferments. Even though the salary of a teacher has historically been meager, many young men remain in that job, seeking the reward of a defermant. The process of channeling manpower by deferment is entitled to much credit for the large number of graduate students in technical fields and for the fact that there is not a greater shortage of teachers, engineers, and other scientists working in activities which are essential to the national interest.

More than ten years ago, it became evident that something additional had to be done to permit and encourage development of young scientists and trained people in all fields. A million and a half registrants are now deferred as students. One reason the Nation is not in shorter supply of engineers today is that they were among the students deferred by Selective Service in previous years. Similarly, Selective Service student deferments reduced what otherwise would have developed into more serious shortages in teaching, medicine, dentistry, and every field requiring advanced study. The System has also induced needed people to remain in these professions and in industry engaged in defense activities or in the support of national health, safety, or interest.

The opportunity to enhance the national well being by inducing more registrants to participate in fields which relate directly to the national interest came about as a consequence, soon after the close of the Korean episode, of the knowledge within the System that there was enough registrant personnel to allow stringent deferment practices employed during war time to be relaxed or tightened as the situation might require. Circumstances had become favorable to induce registrants, by the attraction of deferment, to matriculate in schools and pursue subjects in which there was beginning to be a national shortage of personnel. These were particularly in the engineering, scientific, and teaching professions.

This was coupled with a growing public recognition that the complexities of future wars would diminish further the distinction between what constitutes military service in uniform and a comparable contribution to the national interest out of uniform. Wars have always been conducted in various ways but appreciation of this fact and its relationship to preparation for war has never been so sharp in the public mind as it is now becoming. The meaning of the word'service', with its former restricted application to the armed forces, is certain to become widened much more in the future. This brings with it the ever increasing problems of how to control effectively the service of individuals who are not in the armed forces.

In the Selective Service System the term "deferment" has been used millions of times to describe the method and means used to attract to the kind of service considered to be most important, the individuals who were not compelled to do it. The club of induction has been used to drive out of areas considered to be less important to the areas of greater importance in which deferments were given, the individuals who did not or could not participate in activities which were considered essential to the defense of the Nation. The Selective Service System anticipates further in this area. It is promoting the process by the granting of deferments in liberal numbers where the national need clearly would benefit.

Soon after Sputnik I was launched it became popular to reappraise critically our educational, scientific, and technicological inventory. Many deplored our shortage of scientific and technical personnel, inadequacies of our schools, and shortage of teachers. Since any analysis haveing and connection with manpower and its relation to the Nation's survival vitally involves the Selective Service System, it is well to point out that for quite some time the System has been following a policy of deferring instructors who were engaged in the teaching of mathematics and physical and biological sciences. It is appropriate also to recall the System's previously invoked practice of deferring students to prepare themselves for work in some essential activity and the established program of deferring engineers, scientists, and other critically skilled persons who were working in essential fields.

The Congress, in enacting the Universal Military Training and Service legislation declared that adequate provisions for national security required maximum effort in the fields of scientific research and development, and the fullest possible utilization of the Nation's technicological, scientific, and other critical manpower resources. To give effect to this philosophy, the classifying boards of the Selective Service System defer registrants determined by them to be necessary in the national health, safety, or interest. This is accomplished on the basis of evidence of record in each individual case.

No group deferments are permitted. Deferments are granted, however, in a realistic atmosphere so that the fullest effect of channeling will be felt, rather than be terminated by military service at too early a time.

Registrants and their employers are encouraged and required to make available to the classifying authorities detailed evidence as to the occupations and activities in which the registrants are engaged. It is not necessary for any registrant to specifically request deferment, but his Selective Service file must contain sufficient current evidence on which can be based a proper determination as to whether he should remain where he is or be made available for service. Since occupational deferments are granted for no more than one year at a time, a process of periodically receiving current information and repeated review assures that every deferred registrant continues to contribute to the overall national good. This reminds him of the basis for his deferment. The skills as well as the activities are periodically reevaluated. A critical skill that is not employed in an essential activity does not qualify for deferment.

Patriotism is defined as "devotion to the welfare of one's country." It has been interpreted to mean many different things. Men have always been exhorted to do their duty. But what that duty is depends upon a variety of variables, most important being the nature of the threat to national welfare and the capacity and opportunity of the individual. take, for example, the boy who saved the Netherlands by plugging the dike with his finger.

At the time of the American Revolution the patriot was the so-called "embattled farmer" who joined General Washington to fight the British. The concept that patriotism is best exemplified by service in uniform has always been under some degree of challenge, but never to the extent that it is today. In today's complicated warfare when the men in uniform may be suffering far less than the civilians at home, patriotism must be interpreted far more broadly than ever before.

This is not a new thought, but it has had new emphasis since the development of nuclear and rocket warfare. Educators, scientists, engineers, and their professional organizations, during the last ten years particularly, have been convincing the American public that for the mentally qualified man there is a special order of patriotism other than service in uniform -- that for the man having the capacity, dedicated service as a civilian insuch fields as engineering, the sciences, and teaching constitute the ultimate in their expression of patriotism. A large segment of the American public has been convinced that this is true.

It is in this atmosphere that the young man registers at age 18 and pressure begins to force his choice. He does not have the inhibitions that a philosophy of universal service in uniform would engender. The door is open for him as a student to qualify if capable in a skill badly needed by his nation. He has many choices and he is prodded to make a decision.

The psychological effect of this circumstantial climate depends upon the individual, his sense of good citizenship, his love of country and its way of life. He can obtain a sense of well being and satisfaction that he is doing as a civilian what will help his country

most. This process encourages him to put forth his best effort and removes to some extent the stigma that has been attached to being out of uniform.

In the less patriotic and more selfish individual it engenders a sense of fear, uncertainty, and dissatisfaction which motivates him, nevertheless, in the same direction. He complaines of the uncertainty which he must endure; he would like to be able to do as he pleases; he would appreciate a certain future with no prospect of military service or civilian contribution, but he complies with the needs of the national health, safety, or interest -- or he is denied deferment.

Throughout his career as a student, the pressure --the threat of loss of deferment -- continues. It continues with equal intensity after graduation. His local board requires periodic reports to find out what he is up to. He is impelled to pursue his skill rather than embark upon some less important enterprise and is encouraged to apply his skill in an essential activity in the national interest. The loss of deferred status is the consequence for the individual who has acquired the skill and either does not use it or uses it in a nonessential activity.

The psychology of granting wide choice under pressure to take action is the American or indirect way of achieving what is done by direction in foreign countries where choice is not permitted. Here, choice is limited but not denied, and it is fundamental that an individual generally applies himself better to comething he has decided to do rather than something he has been told to do.

The effects of channeling are manifested among student physicians. They are deferred to complete their education through school and internship. This permits them to serve in the armed forces in their skills rather than in an unskilled capacity as enlisted men.

The device of pressurized guidance, or channeling, is employed on Standby Reservists of which more than 2 1/2 million have been referred by all services for availability determinations. The appeal to the Reservist who knows he is subject to recall to active duty unless he is determined to be unavailableis virtually identical to that extended to other registrants.

The psychological impact of being rejected for service in uniform is severe. The earlier this occurs in a young man's life, the sooner the benificial effects of pressured motivation by the Selective Service System are lost. He is labeled unwanted. His patriotism is not desired. Once the label of'rejectee' is upon him all efforts at guidance by persuasion are futile. If he attemps to enlist at 17 or 18 and is rejected, then he recieves virtually none of the impulsion the System is capable of giving him. If he makes no effort to enlist and as a result is not rejected untill delivered for examination by Selective Service System at about the age 23, he has felt some of the pressure but thereafter is a free agent.

This contributed to establishment of a new classification of I-Y (registrant qualified for military service only in time of war or national emergency). That classification reminds the registrant of his ultimate qualification to serve and preserves some of the benefit of what we call channeling. Without it or any other similar method of categorizing men

in degrees of acceptability, men rejected for military service would be left with the understanding that they are unfit to defend their country, even in war time.

An unprejudiced choice between alternative routes in civilian skills can be offered only by an agency which is not a user of manpower and is, therefore, not a competitor. In the absence of such an agency, bright young men would be importuned with counties and pirated like potential college football players until eventually a system of arbitration would have to be established.

From the individual's viewpoint, he is standing in a room which has been made uncomfortably warm. Several doors are open, but they all lead to various forms of recognized, patriotic service to the Nation. Some accept the alternatives gladly -- some with reluctance. The consequence is approximately the same.

The so-called Doctor Draft was set up during the Korean apisode to insure sufficient physicians, dentists, and veterinarians in the armed forces as officers. The objective of that law was to exert sufficient pressure to furnish an incentive for application for commission. However, the indirect effect was to induce many physicians, dentists, and veterinarians to specialize in areas of medical personnel shortages and to seek outlets for their skills in areas of greatest demand and national need rather than of greatest financial return.

Selective Service processes do not compel people by edict as in foreign systems to enter pursuits having to do with essentiality and progress. They go because they know that by going they will be deferred.

The application of direct methods to effect the policy of every man doing his duty in support of national interest involves considerably more capacity than the current use of indirection as a method of allocation of personnel. The problem, however, of what is every man's duty when each individual case is approached is not simple. The question of whether he can do one duty better than another is a problem of considerable proportions and the complications of logistics in attempting to control parts of an operation without controlling all of it (in other words, to control allocation of personnel without controlling where people eat, where they live, and how they are to be transported) adds to the administrative difficulties of direct administration. The organization necessary to make the decisions, even poor decisions, would, extract a large segment of population from productive work. If the members of the organization are conceived to be resonably qualified to exercise judgemant and control over skilled personnel, the impact of their withdrawal from war production work would be severe. The number of decisions would extend into billions.

A quarter billion classification actions were needed in World War II for the comparatively limited function of the Selective Service System at that time. Deciding what people should do, rather than letting them do something of national importance of their own choosing, introduces many problems that are at least partially avoided when indirect methods, the kind currently invoked by the Selective Service System, are used.

Delivery of manpower for induction, the process of providing a few thousand men with

transportation to a reception center, is not much of an administrative or financial challenge. It is in dealing with the other millions of registrants that the System is heavily occupied, developing more effective human beings in the national interest. If there is to be any survival after disaster, it will take people, and not machines, to restore the Nation.

July 1, 1965

O'Connor v. The Selective Service System

June 21, 65	filed CO claim
Sept. 30, 65	received CO from local board on basis of form
Feb. 12, 66	wrote letter of non-cooperation to local board
June 21, 66	refused to report for civilian work as ordered to by local board
Sept. 2, 66	FBI visit in Pine Bluff
March 15, 67	indictment in S.F. for refusing to submit civilian work for approval
April 14, 67	summons to report April 17 delivered at Little Rock Peace Vigil
April 17	night letter to desk of U.S. Court refusing to honor summons
April 21	arrested at Little Rock Peace Vigil
April 25	returned to S.F. on American Airlines by U.S. Marshalls released on O.R.
May 2, 67	first Court hearing, continuance
May 23	second Court hearing, continuance
*June 2, 67	(1)Motion To Dismiss Indictment filed
June9	Motion To Dismiss Indictment denied by District Court Judge Lloyd Burke; not guilty plea entered, trial date for Aug. 7
Aug. 1, 67	Hershey subpoenaed
Aug. 4	trial date moved to Aug. 28, new subpoena for Hershey issued
Aug. 18	gov't motion to quash subpoena filed
*Aug. 22	(2)Motion In Opposition To Government Motion To Quash submitted Judge Harris upholds gov't motion from bench, without explanation. Subpoena of Hershey thereby quashed
Sept. 5, 67	reset date for trial put off until Sept. 19
Sept. 19	trial reset for Nov. 14, motion for late appeal on quashing of subpoena granted
Sept.	notice of appeal of quashing of Hershey subpoena filed
*Nov. 1, 67	(3)Appeal Brief Filed with 9th Circuit in S.F.
Nov. 14	trial date vacated. New date for resetting trial date Dec. 4
Dec. 4, 67	resetting date reset to Feb. 1, 1968 Marvin Stender appearing for defense (S.F. or L.R.?)
*Jan. 3, 68	(4)Reply Appeal Brief Filed with 9th Circuit in S.F.

PINE BLUFF COMMERCIAL

PINE BLUFF, ARKANSAS, MONDAY, APRIL 17, 1967

Pine Bluff Commercial

O'Connor (Left) Takes Summons From Federal Marshal

Prison Looms for Objector To Draft Board Directive

By MICHAEL B. SMITH
Of The Commercial Staff

Pine Bluff's only professional civil rights organizer may soon be on his way to a federal prison as a result of his refusal to comply with the Selectvie Service Act.

The organizer is Vincent O'Connor, 25, a former field worker for the Student Nonviolent Co-ordinating Committee, is a conscientious objector. He has accordingly received a 1-0 draft classification from his San Francisco draft board.

But when the board ordered him to Los Angeles to begin two years of civilian work — probably as a hospital orderly — O'Connor refused to go as a protest against the Selective Service system, which he calls a "Ministry of Labor."

Friday afternoon, O'Connor was taking part in the weekly silent "peace vigil" in front of the Federal Building in Little Rock when he was approached by Herschel Garner, a deputy federal marshal.

Garner told him he had been indicted by a federal grand jury in northern California for failure to report for civilian work. Garner served O'Connor with a summons to appear in federal District Court in San Francisco at 9 this morning.

Transportation costs to San Francisco were not provided by the government.

O'Connor, apparently not fazed by the summons, immediately said he would not honor it. He re-joined the "peace vigil," a dozen men standing silently in a line. He seemed quite ready to go to prison for his pacifist beliefs.

Today he moved a step closer to doing just that.

He said he had sent a telegram to James P. Welch of San Francisco, clerk of the federal court there. The telegram says in part:

"No money, means or time to appear. Request for extension of time, or for money would be deceptive. Have no intention of doing that which I would not do last June. Disrespect for law not intended. Rather am upholding higher law by refusing co-operation with that which procures young Americans for military service in illegal, immoral, unjust war.

"As civil disobedient, I do so openly in a spirit of reconciliation. Not opposed to service. Feel, however, my vocation is not to serve the state, but needs of people in Arkansas for peace, economic democracy and brotherhood."

• • •

O'Connor was classified as a conscientious objector September 30, 1965. He asked for the classification on religious grounds. He is Roman Catholic. He belongs or has belonged to such groups as the War Resisters League of New York; The American Friends Service Committee, a Quaker organization; and the Student Nonviolent Co-ordinating Committee.

Objector to Draft Faces Possible Term In Federal Prison

From Page 1

His father is Raymond J. O'Connor, a judge in the Juvenile Division of the California Supreme Court.

A pamphlet about civil disobedience and SNCC meetings in San Francisco were the chief factors in his decision to ignore the draft, he said.

He came to Pine Bluff as an SNCC field worker, but has left the organization, and now calls himself a "free-lance" civil rights worker. His financial resources are unclear, but apparently he lives off the donations of friends.

When he was with SNCC, O'Connor was involved in a program to bring about racial desegregation in this area. More recently, he has been working among Negroes in an attempt to get more of them to vote and run for public offices.

During the September, 1966, school election campaign he encouraged several Negro communities to back one of their number for school board positions. He did the same thing among Negro farmers during the election of Agricultural Stabilization community committee members.

In both elections several Negroes won office.

Had O'Conner taken the job his draft board ordered him to, he would have earned between $10 and $12 daily, he said. These wages would have been so low, he said, that he would have felt obliged to apply for another job — that of union organizer.

He did not go to Los Angeles, he said, "because I have a responsibility to myself to engage in something which I consider meaningful."

O'Connor holds a special dislike for General Lewis Hershey, boss and father of the Selective Service System. Hershey, he said, conceives of the draft as a "Ministry of Labor." O'Connor added:

I think I'm bound in conscience to say no to the ministry of labor . . . I consider myself one of the many people who operate in conflict with the draft system. And there are many."

Books apparently have exercised a great influence over O'Connor. He backs most of his opinions with references to books or pamphlets.

A book called "The Organization Man" gave him a horror of the middle class yearning for material success. Bright young men striving for success are, to O'Connor, "people who have so dedicated themselves to structures that they lose their humanity."

O'Connor, says he recognizes the societal need for institutions, but institutions as they exist today — the draft, the Army, the governmental bureaucracy — are his main targets.

"Going to Los Angeles," he said, "would have constituted co-operation with an institution that I consider to be immoral both in its operation and purpose... This is a serious thing."

ARKANSAS GAZETTE, Tues., April 25, 1967.

O'Connor's Return to S.F. Is Ordered

Federal Judge J. Smith Henley issued a warrant Monday ordering Vincent Joseph O'Connor, 25, returned to San Francisco to face a charge of refusing to report for assignment as an institutional helper at a hospital.

O'Connor, the son of a San Francisco superior court judge, was arrested Friday afternoon while participating in the weekly "peace vigil" in front of the Federal Office Building at Little Rock.

He has been classified as a conscientious objector by his San Francisco draft board and was given the hospital assignment in lieu of military service.

A number of "peace vigil" participants showed up Monday for O'Connor's hearing in federal District Court. O'Connor was brought to the hearing from the Pulaski County Jail, where he is being held under $1,000 bond.

John W. Walker, O'Connor's attorney, said O'Connor had had nothing to eat or drink since his arrest.

The United States marshal's office said transportation for O'Connor to San Francisco would be arranged as soon as possible. O'Connor has been a civil rights worker in Arkansas since June 1965.

• ARKANSAS GAZETTE, Sat., April 22, 1967.

—Staff Photo

Deal (left) shows arrest papers to O'Connor.

San Francisco Objector, On 'Peace Vigil,' Arrested

A civil rights worker from San Francisco was arrested Friday afternoon while participating in a "peace vigil" in front of the Federal Office Building at Little Rock.

Vincent Joseph O'Connor, 25, son of Superior Court Judge Raymond J. O'Connor of San Francisco, was arrested on a bench warrant issued by federal District Judge Oliver J. Carter, alleging that O'Connor had failed to appear to face an indictment charging that he had refused to report for assignment as an institutional helper at Los Angeles Charities Hospital.

That assignment was to be in lieu of military service. O'Connor has acquired official status with his draft board as a conscientious objector.

O'Connor was arrested about 5:20 p.m. by Deputy United States Marshal Lindsay Deal, fingerprinted and taken before United States Commissioner John E. Coates at Coates' office at the Pyramid Building. By 6:30 p.m. O'Connor was en route to the County Jail to await being escorted by a deputy back to California. He said he would not post the $1,000 bond set for him and would not return to San Francisco voluntarily. His attorney, John W. Walker, could not be reached before O'Connor was taken to jail.

O'Connor told newsmen before his arrest that he had been "drafted," presumably for the civilian assignment, in November 1966 and that an order had been issued for him to report in June 1966 to his local board for instructions as to his civilian job.

He decided that his vocation and duty were in Arkansas as a civil rights worker, and he came to the state in June 1965. He said he had not been aware of the indictment until served with a summons April 15, also during a silent peace vigil in front of the Federal

(See ARREST on Page 2A.)

Building. The warrant was issued when he failed to report as ordered Monday.

O'Connor has worked at Pine Bluff in the civil rights field, first as a member of the Student Nonviolent Co-ordinating Committee and, since his resignation from SNCC in August, as an independent.

The bench warrant, dated April 17, arrived at Little Rock Wednesday. O'Connor has participated in most of the peace demonstrations in front of the Federal Building since they were begun several weeks ago. Friday, another group opposite the pacifists held a sign that said, "Bomb Hanoi."

O'Connor said he had attended the University of San Francisco "the equivalent of three years" before coming to Arkansas, but did not graduate. His father is a judge in the Superior Court's Juvenile Division, where he hears juvenile cases, felony cases and civil cases involving more than $5,00, as well as appeals from municipal court.

After the summons was served, O'Connor, a Roman Catholic, sent a telegram to the San Francisco court, saying he had no intention of doing now what he had refused to do in June, that he intended no disrespect for the law but that he was "upholding higher law by refusing co-operation with that which procures young Americans for military service in illegal, immoral, unjust war."

He said he was not opposed to service but that he felt his vocation is "not to serve the state, but [the] needs of the people in Arkansas for peace, economic democracy and brotherhood."

Deciding Careers With 'The Club of Induction'

Nearly obscured behind the continuing controversy over the fairness of the Selective Service System in its present form is a question some consider much larger: the far-reaching results the whole draft deferment system has on the lives of young men, completely apart from any question at all of military needs. By challenging the constitutionality of alternative service for conscientious objectors, a 25-year-old Catholic C.O. from San Francisco has in fact raised the larger issue. Beginning court action in San Francisco's Federal District Court, he contends that alternative service is part of a pattern to control the civilian manpower pool within the context of a system by which Selective Service seeks to direct the career choices of all of America's young men.

Classified 1-0 on religious grounds in September, 1965, Vincent O'Connor, son of a S.F. Superior Court judge, notified the Selective Service that he would not accept the usual non-military work. He had been ordered to report to the Los Angeles Department of Charities as an "institutional helper"; however, he ignored the order and continued working in Arkansas as a civil rights organizer. Arrested on April 22, O'Connor was brought to San Francisco by federal marshalls and then released on his own recognizance. After a June 9 preliminary hearing, O'Connor has been ordered to stand for a jury trial on August 7.

There have been attempts in past years by C.O.'s to challenge, in the courts, the concept of alternative service. These cases have been based mainly on the fact that the government has no right under the Constitution to force a man to do a specific non-military job as a condition of being granted the privilege of being a C.O.

In a number of these cases the decisions have suggested that alternative service is necessary to the raising of an army as a means of preserving discipline and morale in the armed forces. They have thereby grounded such alternative service on the power of Congress to raise armies, and to take effective measures to preserve the efficiency of those armies.

But now, in a legal brief by Berkeley attorneys, Peter Franck and Jeanette Hermes, O'Connor charges that the Selective Service, instead of limiting its activities to procuring military manpower for the U.S. armed forces, "is seeking to allocate that manpower that is not necessary for military duty to economic pursuits which the Selective Service System feels are necessary for the national interest.

"It is only by the most strained interpretation of the term 'national interest' that one can assume that a person who cleans out bedpans in a charitable hospital is working in the national interest as that national interest is related to the war powers in Article I, Section 8 of the Constitution.

"Under this tortured reasoning of the Selective Service System, any job or function which contributes in any way to the operation of the national economy is in the national interest."

Criticizing Lt. General Lewis B. Hershey, director of the Selective Service System, O'Connor said the general views the draft as being a "Ministry of Labor." Hershey has maintained that the deferment of men from military service to pursue civilian activities has always been a function of Selective Service: "The spectrum of skills vital to the nation's capacity to survive has steadily broadened. Its limits cannot be foreseen . . . Selective Service deferment policies to channel men into these activities and to induce them to remain there have normally anticipated public recognition of the need. . . . Flexible deferment policies provided for in the law permits Selective Service not only to help meet today's manpower needs, but to anticipate tomorrow's, to adapt manpower policies to changing needs as they arise. . . ."

Hershey notes, "One reason the nation's shortage of scientists, engineers and technicians in the late 1950's was not 40,000 to 50,000 greater was the System's student deferment policies of earlier years. . . ."

A key piece of evidence O'Connor's attorneys plan on introducing to the court is *Channeling*, a Government Printing Office publication designed for the "internal orientation of Selective Service employees." In their ten-page legal brief Franck and Hermes describe the publication as an explanation of how the "totalitarian policy of dictating career choices to America's millions of young men is dressed up in acceptable sheep's clothing."

They note a particular passage from the publication which discusses the word "service": "The meaning of the word 'service,' with its former restricted application to the armed forces, is certain to become widened much more in the future. This brings with it the ever increasing problems of how to control effectively the service of individuals who are not in the armed forces."

Elsewhere "choice" is discussed:

"The psychology of granting wide choice under pressure to take action is the American or indirect way of achieving what is done by direction in foreign countries where choice is not permitted."

Channeling adds, "The club of induction has been used to drive out of areas considered to be less important to the areas of greater importance in which deferments were given, the individuals who did not or could not participate in activities which were considered essential to the defense of the nation. The Selective Service System anticipates further evolution in this area."

O'Connor, who also presents the traditional arguments that alternative service violates the First, Fifth, Ninth and Thirteenth Amendments, vows he will take his case to the Supreme Court if necessary. But the federal government's attorneys may prefer a speedy trial before the case gains any national publicity. Although the immediate issue is alternative service, O'Connor is really asking whether Selective Service has been acting in "excess of the statutory and Constitutional authority" the nation has granted it.

A. V. KREBS, JR.

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No. 22264

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCENT JOSEPH O'CONNOR,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

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IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCENT JOSEPH O'CONNOR, Appellant, vs. THE UNITED STATES OF AMERICA Appellee.	No. 22264

APPELLANT'S REPLY BRIEF

I

SUMMARY OF ARGUMENTS

Appellee devotes most of its Brief on Appeal to argue that this Court lacks jurisdiction over this appeal because the order appealed from is not the final decision within the meaning of 28 USC 1291. Analysis of the case in light of the authorities on this question demonstrate that this is an appeable order.

Appellees argue that the order was in any event proper, apparently on the theory that the illegality of the Civilian Work Program of the Selective Service System would not be

a valid and proper defense to the charge of refusing to submit to an order to participate in that program (Appellee's Brief p.9).

II

ARGUMENT

(1) ORDERS WHICH HAVE A FINAL AND IRREPAIRABLE EFFECT ON THE RIGHTS OF THE PARTIES ARE REVIEWABLE.

> "The effect of the statute (28 USC 1291) is to disallow appeal from any decision which is tentative, informal or incomplete... So long as the matter remains open, unfinished or inconclusive, there may be no intrusion by appeal." : Cohen v. Beneficial Industrial Lean Corp., 537 U.S. 541, 546, 93 L Ed 1528, 1536, 69 S. Ct. 1221.

The critical question here is whether due regard for the Constitutional rights of Appellant require review at this stage. The Court below filed no memorandum in support of its decision, and counsel for Appellee can present practically no applicable legal argument on behalf of the ruling below. The Government asks this Court to stay its hand, to compel Appellant to go through the shell of a trial at which he is precluded from presenting his defense, to appeal to this Court after trial, in a posture where this Court cannot, if it should find that the Court below committed error, free the Appellant, but must order a new trial. It is respectfully submitted that this matter is within the holding of U.S. v. Cobb, 326 F.2d 115 (1964) wherein it is held that an order which "completely disrupts the further orderly proceedings..." is reviewable. In that case, the order was one setting aside a declaration in re condemnation, without prejudice. Similarly

the Seventh Circuit opinion in Atlass v. Miner, 265 F.2d 312 wherein review was granted and mandamus issued in re discovery orders in an Admiralty proceeding because "The critical issue raised at this juncture strikes at a fundamental procedural question, to await its determination until the hearing of an appeal upon the merits of the case would afford a clearly inadequate remedy." 265 Fed.2d 313.

Chief Justice Warren has written: "A pragmatic approach to the question of finality has been considered essential to the achievement of 'just, speedy, and inexpensive determination of every action': The touch stones of Federal procedure." Brown Shoe Company v. U.S., 370 U.S. 294, 306, 8 L Ed 510, 525, 82 S.Ct. 1502. Mr. Justice Stewart has pointed out that the basic policy problem with so called interlocutory appeals is that they do not necessarily present a case of controversy, i.e., it is often difficult for the Court to determine whether the order complained of prejudices the rights of the appellant. Andrews v. U.S., 373 US 334, 340, 10 L Ed 2d 388.

In the instant case, the right of Appellant to speedy trial is violated because the clearly erroneous ruling of the Court below compels him to seek delay in the trial pending the appeal, in order to avoid the far more substantial delay inherent in proceeding through an empty trial in which he cannot present his defense, and proceeding upon a subsequent appeal to obtain a retrial which would take place years after the original indictment.

Appellant's right to counsel, and the right to counsel of

any other young men similarly situated are seriously jeopardized by the position taken by the Government in this matter. Because of the importance of the issues involved counsel has been retained on the basis of substantially reduced fees. In view of the substantial number of pending prosecutions of this nature involving young men with very limited means, many other members of the bar are making similar arrangements. In very many of these cases the actual operation of the Selective Service System visa-vis, the Registrant will be in issue. In light of the position of the Selective Service System that it is beyond the scope of discovery process, the ruling below, and the Government's position that it is not an appealable ruling, threaten to place defendants prosecuted under the Selective Service Act and their counsel in the position of having to bear double the burden of trial and appeal so long as orders of the nature appealed from herein are allowed to stand beyond the jurisdiction of the courts of appeals.

The line of cases relied upon by the Government, DiBella v. United States, 369 U.S. 121, 126 (1962), Application of Leahy, 298 F.2d 233 (9th Cir., 1955), etc., are quite inapposite here. DiBella simply put to rest a distinction made in some circuits between the appealability of an order suppressing evidence illegally obtained, when made prior to indictment, as against one made subsequent to indictment. This was a rule based on an arbitrary distinction as to a point in time, and not reflecting in any way the real interests of the parties. The Government cites Hoffa v. United States, 309 F.2d 689

(5th Cir.) cert. denied 371 U.S. 878 (1962), which is a per ciriam opinion setting forth neither the factual background, the record, nor the grounds for the Court's action. The Government is unable to cite, in the face of the clear mandatory language of the Sixth Amendment of the Constitution a single case in which a subpeona ad testificandum has been quashed. All the cases relied upon by the Government involved subpeonas duces tecum.

Appellee's little fantasy (p. 7) about a District Court suspending a jury trial while, after it has changed its mind, General Hershey is subpeoned and brought to Court merits little comment. Appellees claim that all that is involved in the order appealed from is Appellant's failure to make sufficient showing as to Appellant's need for the testimony of General Hershey. In the absence of any statement of reasons from the Court below, we must assume that this action was taken for any other reasons urged by the Government, including their contention that as a high Government official General Hershey is immune to the process of the Court.

III

CONCLUSION

It is respectfully submitted that for the reasons set forth herein, the interests of a fair and speedy trial, this Court should reverse the order of the Court below.

DATED: January 2, 1968.

Respectfully submitted,

PETER FRANCK
DOUGLAS J. HILL.

By Peter Franck
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Attorneys for Appellant

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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No. 22264

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VINCENT JOSEPH O'CONNOR,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

BRIEF FOR APPELLANT

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IN THE UNITED STATES COURT OF APPEALS

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Appellee.

BRIEF FOR APPELLANT

I

THE PLEADINGS AND FACTS AS TO JURISDICTION

Appellant was indicted for violation of 50 USC, App. 462 on March 15, 1967. (Clerk's typewritten transcript of record here in after referred to as R.Jp. 1,2). It was alleged "that he did fail and neglect to comply with an order of his local board to report to said board for instructions to proceed to the Los Angeles County Department of Charities...to report for employment...." (R.2)

On June 6, 1967, Appellant filed his Motion to Dismiss Indictment. (R.28) Said motion was made on the ground that the order requiring Appellant to perform civilian work was invalid and a nullity, because the civilian work program of the Selective Service System is operated in a manner and for the purposes which are in violation of the First, Fifth and Thirteenth Amendments to the United States Constitution, and in excess of and wholly without statutory authority. On June 9, 1967, the court below, the Honorable Lloyd Burke presiding, denied Appellant's motion. (R.28, 1.5)

The matter was set for trial, and Appellant sought and obtained a subpoena addressed to Lewis B. Hershey, 1724 F Street, Northwest, Washington, D.C., to appear and testify for defendant at said trial. (R.3,4,5.) Lewis B. Hershey is the National Director of the Selective Service System. Appellee subsequently moved the court below for an order quashing said subpoena. (R.6,7) After argument, said order was granted by the court below, the Honorable George B. Harris presiding. (R.28, 1.13) No opinion was delivered from the bench or filed subsequently.

After an attempt at informal discovery proved fruitless, Appellant obtained the order of the Court below extending time in which to file his Notice of Appeal, (R.25,26) and duly filed said Notice. (R.18)

This court has jurisdiction of this appeal pursuant to 28 USC 1291, which states:

> The courts of appeals shall have jurisdiction of appeals from all dinal decisions of the

> District Courts of the United States...except where a direct review may be had in the Supreme Court.

Where the subpoena sought is for a non-party witness whose testimony is essential to the case of the party seeking it, an order quashing a subpoena is final within the meaning of Section 1291. Carter Products, Inc. v. Eversharp, Inc., (CA Ill 1966) 360 Fed. 2d 868; Horizons Titanium Corp. v. Norton Company, (CA Mass. 1961) 291 F.2d 421; Overby v. U.S. Fidelity and Guarantee Company, (CA Ala. 1955) 224 Fed.2d 158.

II

STATEMENT OF THE CASE

The gravamen of Appellant's defense herein is that the civilian work program of Selective Service, as administered by the Director, is unconstitutional and unlawful, and any order issued to Appellant pursuant to said program is therefore invalid. Appellant contends that the civilian work program is part and parcel of the "channeling" program which the Selective Service System has arrogated to itself without statutory authority. Appellant can only present his constitutional defense by offering to the trial court competant evidence as to the actual operation of this program. Extensive efforts by Appellant and his counsel, not without cooperation from counsel for Appellee, have resulted in evasive correspondence and cancelled depositions.

Only by obtaining the testimony of the Director of Selective Service can Appellant present his defense.

Counsel is not unmindful of the fact that the witness resides in Washington D.C., and has extensive responsibilities. Accordingly, (at a time when there was reason to believe that the witness would cooperate), associate counsel was retained in Washington, and arrangements were made for the deposition of the witness to be taken there, to be offered at trial with a waiver of objections as to form and a reservation of objections as to admissability. (See similar stipulation entered into with regard to the proposed alternative deposition of Colonel Thomas Jensen, the California Director of Selective Service. (R.20)

III

SPECIFICATION OF ERRORS

Appellant contends that it was error for the District Court to quash the subpoena herein because:

1. The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right...to have compulsory process for obtaining witnesses in his favor...

2. Appellant, by the order below, is denied the due process of law (Fifth Amendment to the United States Constitution) and his right to a speedy trial (Sixth Amendment to the United States Constitution.)

3. No relevant authority has been cited by counsel for Appellant below, or by the District Court, for quashing the subpoena.

4. If the Government determines that there is an over-

riding reason for withholding information as to this aspect of the operation of the Selective Service System, it must choose between withholding the information and proceeding with the prosecution of Appellant. Jencks v. US, 353 US 657, I L Ed 2d 1103, 77 S. Ct. 1007.

IV

ARGUEMENT

(1) THE COURT BELOW HAS INDICATED THAT AN AUTHORITATIVE PRESENTATION OF FACTS IS NECESSARY BEFORE IT WILL ENTERTAIN APPELLANTS DEFENSE THAT THE CIVILIAN WORK PROGRAM IS UNCONSTITUTIONAL AS APPLIED.

Appellant attempted to raise this matter by Motion to Dismiss filed below. (R.8) At the hearing on Appellant's Motion to Dismiss, the court made it clear that it was not satisfied with more citation of documents and authorities.

> MR. FRANCK: Our brief makes it clear that The Selective Service System, without discussion, debate, basically without legislation, has arrogated to itself just that function as the Burke Marshall Report indicates, has no constitutional basis.
>
> THE COURT: Let's stay with authorities instead of reports.
>
> MR. FRANCK: Well, Your Honor, I think however, Burke Marshall is a recognized legal authority.
>
> THE COURT: Give me cases or statutes. (Page 6. I. 7-16, Transcript of Hearing, June 9, 1967)

Thus, Appellant can not present his defense without presenting factual matter relating to the operation of the civilian work program from authoritative sources. Accordingly, the subpoena quashed below was wought.

The primary factual issue in this case is the actual

operation of the civilian work program. The testimony of General Hershey is sought because this program is administered directly by him, and he is, therefore, the sole authoritative source available. Pursuant to Selective Service Regulation, 32 CFR 1660, 20 (d), the National Director of Selective Service is the sole officer in charge of this program.

This court considered that regulation in Mang v. United States, 339 F.2d 360 (CA 9, 1964). In that case Appellant alleged that his order to report for civilian work was invalid because his local board had not exercised its own discretion in declining the alternative service work which he proposed. This court held that whereas classification is to be decided by local boards, "the problem of what type of civilian work is to be undertaken by a 'I-O registrant is finally to be determined by the National Director of Selective Service." (339 F.2d 369, 370)

The testimony sought apparently can be obtained in no other way. Counsel for the defendant has in this, and in some other cases, unsuccessfully sought to determine from state and local officials of the Selective Service System the policies applicable to the selection of alternative service employment. For example, defendant attached to his Memorandum in Opposition below (R. 11-18) a letter received from the California Headquarters of the Selective Service System on August 12, 1967 (r. 16) pertaining to another registrant. This letter was in response to four prior inquiries. In that

particular case, Selective Service had determined that work on the Apollo Space Program (for the National Aeronautics and Space Administration) in a positive which the employer certified could not be refilled in less than fourteen months, was not "work in the national interest" within the meaning of the alternative service provision of 50 USC App. 456(j). In that letter (para. 2) State Headquarters wrote:

> "The guidelines set up by the Director of Selective Service have never been consolidated into a definite regulation or memorandum. From the time of the inception of the Conscientious Objector Civilian Work Program, the Director has furnished the various State Directors with his interpretation of the intent of Congress as reflected from the various committee meetings when the Selective Service Act has been discussed. In addition to the interpretation of the intent of Congress, the Director has furnished information by letters involving various individual registrants as to what he believed was intended by Congress..."

Appellant submits that there can be no better evidence that the facts and rules under which the alternative service program is run are carried around in the mind of the Director of Selective Service, and are available from no other authoritative source.

(2) THERE IS NO LEGAL AUTHORITY TO QUASH THE SUBPOENA ISSUED HEREIN.

The authorities relied upon by Appellee below (R.75) are completely inapposite to the present case and to their motion. May v. U.S., 175 F. 2d 994, 1010 (DDC, 1949), stands for nothing more radical than the proposition that a party may not subpoena the Secretary of State of The United States without a showing with regard to what testimony is expected

from him. In the present case, there have been frequent discussions between counsel for Appellant and counsel for Appellee, the plaintiff knows quite clearly the purpose of the testimony sought.

In Gajewski v. U.S., 321 F2d 261, 268-9 (CA 8, 1963), defendant sought to call to the witness stand the United States Attorney and the Clerk of the court, both of whom were present in court at the time. In opening its discussion of this point (a minor one in the case), the court is careful to point out that this was not a case dealing with the subpoena power, inasmuch as the parties whose testimony was was sought were already present, but a case involving a trial judge's discretionary power to control the proceedings in his courtroom. The court said:

> Generally a trial court has wide discretion respecting examination of witnesses...
>
> More particularly, under appropriate circumstances a court may refuse to even allow a witness to take the stand... (Emphasis added.)

The court goes on to point out that courts are especially reluctant to allow attorneys to be called as witnesses in trials in which they are advocates. The reasons for this are selfevident. However, the court goes on to say:

> The defendant's right to call relevant witnessess and to present a complete defense may not be abrogated for the sake of trial convenience or for the purpose of protecting the U.S. Attorney from possible embarrassment while testifying if he possesses information vital to the defense. But here, the trial court was fully justified in requiring appellant...to indicate in advance the general nature of the testimony he desired to elicit... (Emphasis added.)

The court further points out that in its case the defendant, attempting to represent himself, had repeatedly tried to inject irrelevant and inflamatory material into the trial, and to defy the court's orders in this regard. In this conduct it found ample basis to require some showing of relevance. Obviously, no such contention can be made in the case at bar.

Thus, authorities relied upon by Appellee below stood for the proposition that upon a prima facie showing of materiality (which the Government's own memorandum demonstrates already existed), the trial court does not have the authority to quash the subpoena.

(3) THE RIGHT TO COMPULSORY PROCESS IS OF EQUAL DIGNITY WITH THE RIGHT TO TRIAL BY JURY AND THE RIGHT TO COUNSEL.

United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accussed shall enjoy the right...to have compulsory process for obtaining witnesses in his favor..."

Under the Sixth Amendment, a defendant accused of a crime is guaranteed the right to compel attendance of witnesses, and who those witnesses are is a matter for defendant and his counsel to decide. United States v. Davenport, (CA III. 1963) 312 F.2d 303: United States v. Seegar, (D.C.N.Y. 1963) 180 Fed.Sup. 467.

(4) APPELLANT'S RIGHT TO A SPEEDY TRIAL ARE VIOLATED BY THE ORDER APPEALED FROM.

To require Appellant to submit to the shell of a hollow trial, in which he is precluded from presenting his defense, and to then pursue this matter on subsequent appeal

to this court, wherein the only just disposition would be remand for a new trial would deny Appellant his right to a speedy trial and an early determination of the issues. Bell v. Georgia Dental Assoc., (DC Georgia 1964) 231 F.Sup. 299.

(5) THE PROSECUTION MUST BE ABANDONED IF THE GOVERNMENT REFUSES TO DIVULGE RELEVANT AND NECESSARY INFORMATION.

If the Director of Selective Service feels that the facts pertaining to the operation of the civilian work program cannot, in the national interest, be divulged, the Government must choose between compelling such disclosure and pursuing this prosecution. Jencks v. U.S., 353 US 657, 672; I L Ed 703, 1114, 77 S.Ct. 1007 Roviaro v. U.S., 353 US 53, 60, 61; I L. Ed 2d 639, 344, 345, 77 S.Ct. 623. The court, Mr. Justice Brennan writing, in Jencks further points out that this is a decision for the Government to make and is "not to be shifted to the trial judge..."

V

CONCLUSION

It is respectfully submitted that Appellant has more than adequately shown that in the interests of a fair and speedy trial, this court should reverse the order of the court below to vindicate the constitutional guarantees of compulsory process and speedy trial.

Respectfully submitted,

DATED: November 1, 1967

PETER FRANCK
JEANETTE HERMES

By PETER FRANCK
PETER FRANCK

CERTIFICATE OF COUNSEL

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

PETER FRANCK
PETER FRANCK

Attorney for Appellant.

PETER FRANCK
2890 Telegraph Ave.
Berkeley, California
845 - 4123

Attorney for Defendent.

IN THE UNITED STATES DISTRICT COURT,

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintif,

-vs-

VINCENT JOSEPH O'CONNOR

Defendent.

Criminal
No. 4 1 2 7 9

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO MOTION TO QUASH SUBPOENA,

I

Plaintif's Memorandum of Points and Authorities first argues that the defendent has made no showing that the testimony sought will be productive of relevant or material testimony, and then, under his point II, points out that the record, in the form of defendent's Motion to Dismiss, shows precisely what kind of testimony is sought, and demonstrates it materiality.

II

Defense in this case is that the order issued to defendent to report for civilian work was an invalid order, in that the alternative service program is un-Constitutional as in excess of Congress' authority under the war powers clause of the Constitution. Defendent also alleges that said order is invalid as part and parcel of an unlawful exercise of author-

ity by the Selective Service System over the lives of America's young men.

III

The primary factual issue in this case is the actual operation of the civilian work program. Under the relevent Selective Service Regulations (32 CFR 1660, 20(d)), the National Director of Selective Service is the officer in charge of this program.

In Mang vs. United States, 339 F. 2d, 369 (CA 9, 1964) appellant alleged that his order to report for alternative service was invalid because his local board had not exercised its own discretion in declining the alternative service work which he proposed. The court held that whereas classification is to be decided by the local boards, "the problem of what type of civilian work is to be undertaken by the "1-O" registrant is finally to be determined by the National Director of Selective Service." (339 F. 2d 369, 370.)

The testimony of General Hershey is sought because this program is administered directly by him.

IV

The testimony can be obtained in no other way. Counsel for defendent has in this, a d in other cases, sought to determine from state and local levels of the Selective Service System the policies applicable in the selection of alternative service employment. As an example, defendent attaches hereto a letter recieved from the State Headquarters of the Selective Service System on August 12, 1967 pertaining to another registrant. Said letter was in response to four

prior inquiries. Prior correspondence had referred to "guidelines" which supported the notion that work by the registrant on the Apollo Program for the National Aeronautic and Space Administration, for which, according to his employer, it would take 14 months to train a replacement, was not "work in the national interest." The State Headquarters wrote:

> "The guidelines set up by the Director of Selective Service have never been consolidated into a definite regulation or memorandum. From the time of the inception of the Conscientious Objector Civilian Work Program, the Director has furnished the various State Directors with his interpretation of the intent of Congress as reflected from various committee meetings when the Selective Service Act has been discussed. In addition to the interpretation of the intent of Congress, the Director has furnished information by letters involving various individual registrants as to what he believed was intended by Congress to permit a registrant to be exempt from service in the armed forces." (Emphasis added.) (Full letter is set forth as Exhibit "A", attached hereto.)

Perhaps nothing can illustrate more the fact that the facts and rules under which the alternative service program is run are carried around in the mind of the Director of Selective Service, and are available from no other source.

V

The authorities relied upon by plaintiff are completely in apposite to the present case and to their motion. May vs. United States, 175 F. 2d 994, 1010 (DCC, 1949) stands for nothing more radical than the proposition that a party may not subpoena the Secretary of State of the United States without a showing of the testimony to be expected from him. In the present case, there have been frequent discussions between counsel for defendent and counsel for plaintiff, and plaintiff knows quite clearly the purpose of the testimony sought.

In Gajewski vs. United States, 321 F. 2d 261, 268-9 (CA 8, 1963) defendent sought to call to the witness stand the United States Attorney and the clerk of the court, both of whom were present in court at the time. In opening its discussion of this point (a minor one in the case), the court is careful to point out that this was not a case dealing with subpoena power, inasmuch as the parties whose testimony was sought were already present, but a case involving the trial judge's discretionary power to control the proceedings. The court said:

> Generally a trial court has wide discretion respecting examination of witnesses . . . .
>
> More particularly, under appropriate circumstances, a court may refuse to even allow a witness to take the stand . . . (Emphasis added.)

The court goes on to point out that courts are especially reluctant to allow attorneys to be called as witnesses in trials in which they are advocates. The reason for this are self-evident. However, the court goes on to say:

> "The defendent's right to call relevent witnesses and to present a complete defense may not be abrogated for the sake of trial convenience or for the purpose of protecting the United States Attorney from possible embarassment while testifying if he possesses information vital to the defense. But here, the trial court was fully justified in requiring appellant . . . . to indicate in advance the general nature of the testimony he desired to elicit . . . ." (Emphasis added.)

The court goes on to point out that this was particularly true in that case because the defendent, attempting to present himself, had repeatedly tried to inject irrelevant and inflamatory material into the trial, and to defy the court's orders in this regard.

Thus, the authorities relied upon by the plaintiff in fact stand for the proposition that upon prima facie showing of materiality, which Government's own memorandum demonstrates already existed, the trial court does not have the authority to quash the subpoena.

VI

The right to compulsory process is of equal dignity with the right to trial by jury and the right to counsel. United States Constitution, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . . have compulsory process for obtaining witnesses in his favor . . ."

VII

The foregoing should be sufficient to more than answer plaintiff's contention that the said subpoena constitutes harassment of a high Government official. Whether the Director of Selective Service is, in the language of May vs. United States (supra) "similarly circumstanced" to the Secretary of State may be doubted. However, defendent recognizes that the Director has nation-wide responsibilities, and that for him to travel across the entire country to testify at this trial might be considered an unnecessary burden. Defendent is also mindful of the fact that it has been necessary for him, pursuant to the Federal Rules of Criminal Procedure, to tender to the witness $484, to cover travel costs and witness fee.

In view of the foregoing circumstances, counsel for defendent indicated to Government counsel four weeks ago that

he would be willing to take the deposition of this witness in Washington, D.C., waiving objections as to form and reserving questions of admissibility to the time of trial. Counsel for the defense has retained associate counsel in Washington for this purpose, and stands ready to proceed in such a fashion. Service of the subpoena was a necessary pre-requisite, inasmuch as a motion for discovery in a criminal case requires a showing of unavailibility of the proposed witness, and defendent could make no such showing.

There are many persons who have been involved in the processing of defendent's Selective Service file, and who may have relevant testimony. If there was any interest in harassment, defendent could have issued a very large number of subpoenas, and made a strong showing for their validity. Defendent chose instead to go to the one source which has the full basic information available, to simplify the problems of the case for court and counsel.

It is respectfully submitted that there is no legal authority for the Government's Motion to Quash and that said motion should, therefore, be denied.

Dated August 21, 1967.

Respectfully submitted,

_____
PETER FRANCK
Attorney for Defendent

SEAL

California Headquarters

SELECTIVE SERVICE SYSTEM

Federal Building
Eighth and I Streets
Sacramento, California 95814

10 August 1967 3-8

Mr. Peter F. Franck
Attorney at Law
2890 Telegraph Avenue
Berkeley, California

SUBJECT: Conscientious Objector Work Program
(Name and Selective Service Number
ommitted.)

Dear Sir:

This will acknowledge receipt of your letter dated 2 August 1967 relative to the subject registrant.

The guidelines set up by the Director of Selective Service have never been consolidated into a definite regulation or memorandum. From the time of the inception of the Conscientious Objector Civilian Work Program, the Director has furnished the various State Directors with his interpretation of the intent of Congress as reflected from the various committee meetings when the Selective Service Act has been discussed. In addition to the interpretation of the intent of Congress, the Director has furnished information by letters involving various individual registrants as to what he believed was intended by the Congress to permit a registrant to be exempt from service in the armed forces.

Please examine Section 1660.21(a) of our regulations relative to performing civilian work in a registrant's home community. Your attention is also called to LBM No. 64 which sets up the framework for a local board to follow in processing registrants in Class I-).

We believe the Local Board No. 61 is fulfilling all of the purposes for which the Selective Service Act was passed. We do not believe it is acting in excess of its authority.

FOR THE STATE DIRECTOR

E. M. KEELEY
Chief, Registration and Conscientious
Objector Section

O'CONNOR FREEDOM FUND
584 Page St.
San Francisco, California 94117

PETER FRANCK
JEANETTE HERMES
2890 Telegraph Avenue
Berkeley, California
845-4123

Attorneys for Defendant.

IN THE UNITED STATES DISTRICT COURT, FOR THE
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

VINCENT JOSEPH O'CONNOR,

Defendant.

No. 4 1 2 7 9

MOTION TO DISMISS INDICTMENT AND MEMORANDUM OF AUTHORITIES

Defendant moves this Honorable Court to dismiss the indictment herein on the grounds that the Order recited therein is unlawful on its face as in excess of the statutory and Constitutional authority of the Selective Service Board.

Memorandum of Authority

I. THE SELECTIVE SERVICE SYSTEM MAY NOT LAWFULLY ISSUE ANY ORDER REQUIRING THE PERFORMANCE OF NON-MILITARY WORK, INASMUCH AS THE SELECTIVE SERVICE SYSTEM OF THE UNITED STATES IS BEING USED TO ALLOCATE NATIONAL MANPOWER IN THE CIVILIAN REALM, AND THROUGHOUT THE ENTIRE ECONOMY, AND NOT AS A MEANS TO RAISE AN ARMY.

This activity has not been authorized by Congress, and if it were so authorized, it would be in excess and in violation of Article I, Section 8, Clauses 11, 12, 13 and 14 of the United States Constitution.

Lieutenant General Lewis B. Hershey, Director of the Selective Service System, writing in a publication of the System, entitled, "Outline of Historical Background of Selective Service and

Chronology" (Page 30) states:

> The deferment of men from miliatary service to pursue civilian activities in the national interest has always been a function of Selective Service. The prospect of deferment has had the effect of influencing men to pursue such activities. The spectrum of skills vital to the nation's capacity to survive has steadily broadened. Its limits cannot be foreseen....Selective Service deferment policies to channel men into these activities and to induce them to remain there have normally anticipated public recognition of the need....Flexible deferment policies provided for in the law permits Selective Service not only to help meet today's manpower needs, but to anticipate tomorrow's, to adapt manpower policies to changing needs as they arise...

In the same publication, General Hershey discusses student deferments:

> The approach was, rather, a positive effort to help meet the nation's manpower problems by channeling men through deferment and the prospect of deferment into vital civilian endeavor. The channeling process complemented the function of maintaining by direct and indirect means, the strength of the active and reserve forces rounding out the System's manpower management responsibilities.

The Director goes on to point out that the deferment policies of earlier years resulted in, "One reason the nation's shortage of scientists, engineers and technicians in the late 1950's was not 40,--- to 50,000 greater was the System's student deferment policies of earlier years..."

In a publication entitled, "Channeling',Colonel Bernard T. Franck, III, Chief of the Office of Legislation and Liaison of the Selective Service System (GPO Publication 890-125, July 1, 1965) writes: "One of the major products of the Selective Service classification process is the channeling of manpower into many endeavors, occupations and activities that are in the national interest..."

This publication, designed for the internal orientation of Selective Service employees, goes on to reveal the true self-conception and mission of the System which seeks to punish defendant for refusing to perform hospital work:

> Delivery of manpower for induction, the process of providing a few thousand men with transportation to a reception center, is not much of an administrative or financial challenge. It

> is in dealing with the other millions of registrants that the System is heavily occupied, developing more effective human beings in the national interest. If there is to be any survival after disaster, it will take people, and not machines, to restore the nation.

The essence of this language, which is echoed in other publications of the Selective Service System (see Outline of Historical Background of Selective Service, Lieutenant General Lewis B. Hershey, 1965, pps. 30 and 31, "The Channeling Function"; "The Purposes of Selective Service", GPO Document 899-122, July 1, 1965, p. 1, Item 3; "Selective Service Today', GPO Document 899-126, pps. 8 and 9), is that the Congressional delegation of power to the Selective Service System to defer certain men from the induction process, primarily because they are in abundant supply in terms of the needs of the armed forces, is being used not to determine who will be in the armed forces, but rather, to determine the entire complexion of the nation, both before war, during war and after a nuclear holocaust. The enormity of this picture, wherein manpower is allocated years in advance, and men are distributed in the economic system like pawns on a chessboard, was discussed by no less noted a scholar than Edward S. Corwin, in his book, "Total War and the Constitution". Corwin was speaking in this book about the policy in World War II, enunciated by the chairman of the War Manpower Commission, a Mr. McNutt, who issued an order that all workers designated as non-deferable, that is, non-essential, were to choose between induction into the armed services and transferring to essential jobs. In discussing this, Professor Corwin said:

> In consequence of adopting too lax a labor policy at the outset of our entrance into the war, Mr. Roosevelt was finally driven by accumulating difficulties to propose an excessively stringent policy. In point of fact, there was little difference in principle between a labor draft and Mr. McNutt's "work or fight" orders, which rested... on the highly questionable theory that when Congress authorized conscription of certain categories of citizens into the military or naval service, it thereby endowed the President with the power to compel those citizens to do anything he might choose to demand of them as an alternative

to their being put on the firing line. It seems extremely unlikely that Congress in enacting conscription really intended to clothe the President with any such coercive powers, or to make the Army a penal institution.

The Selective Service publication entitled, "Channeling" says:

> The meaning of the word "service", with its former restricted application to the armed forces, is certian to become widened much more in the future. This brings with it the ever increasing problems of how to control effectively the service of individuals who are not in the armed forces.

The said Selective Service System publication continues to explain how the System has been able to allocate personnel into the educational, scientific, and technological "inventory" by its liberal policy of deferments. The method of exercising such control over individuals who are not to become members of the armed services is explained:

> Registrants and their employers are encouraged and required to make available to classifying authorities detailed evidence as to the occupations and activities in which the registrants are engaged.

This revealing publication goes on to explain how this totalitarian policy of dictating career choices to America's millions of young men is dressed up in acceptable sheep's clothing:

> In the Selective Service System, the term "deferment" has been used millions of times to describe the method and means used to attract to the kind of service considered to be most important, the individuals who are not compelled to do it. The club of induction has been used to drive out of areas considered to be less important to the areas of greater importance in which deferments were given, the individuals who did not or could not participate in activities which were considered essential to the defense of the nation. The Selective Service System anticipates further evolution in this area. (Emphasis added.)

These self-proclaimed goals of the Selective Service System must be compared to the nation's actual need for military manpower. In his message of March 6, 1967 (90th Congress, First Session, House of Representatives Document No. 75), the President of the United States pointed out that today, with the increase in population, there are many more men available for military duty than are required. He says:

> Today, the need is for less than 50%, and only about one-third or less of this number must be involuntarily inducted -- even under conditions of war. When the firing stops, as we all fervently hope it will soon, the requirements will be for fewer still.

With these figures in mind, it becomes even more apparent that the Selective Service System is not confining itself to the tasks delegated to it by the Congress of the United States, that is, to procure military manpower for the United States armed forces. Rather, it is seeking to allocate that manpower that is not necessary for military duty to economic pursuits which the Selective Service System feels are necessary for the national interest.

It is in this context that the attempts by the Selective Service System to assign men who have been exempted from service in the armed forces on the grounds of their conscientious religious objection to participation in war in any form to fill-in work must be viewed. The assignment most frequently made in the State of California, by the Director of Selective Service for the State, and which was made to defendant herein, is work as an institutional helper in the Los Angeles Department of Charities. It is only by the most strained interpretation of the term national interest" that one can assume that a person who cleans out bedpans in a charitable hospital is working in the national interest as that national interest is related to the war powers in Article I, Section 8 of the Constitution. Under this tortured reasoning of the Selective Service System, any job or function which contributes in any way to the operation of the national economy is in the national interest.

Within the context of the channeling function, as seen by the Selective Service System, the assignment of conscientious objectors to alternative service of any variety whatsoever would be justified in the same way that forcing young men into careers as mechanical engineers, for example, may be justified on the basis of General

Hershey's belief that the country needs more mechanical engineers.

The indictment herein charges on its face that the defendant refused to accept orders to engage in civilian work. Such an order is on its face unlawful and invalid, in that it is based upon an arrogation to itself by the Selective Service System of a power never intended for it by Congress, never granted, and which Congress could not Constitutionally grant.

It has been repeatedly held that service in the armed forces does not come within the involuntary servitude prohibited in the Thirteenth Amendment, because the Congress has expressly been granted the power to raise and maintain military forces by Article I of the Constitution. There is no comparable grant of authority to dictate the civilian lives and czreer plans of the nation's young men. If the day ever comes that our people consent to the exercise of such totalitarian power over their lives by the Government, we will be compelled to ask what the difference is between such a system and the one we are asked to fight against.

II. ORDERING OF A CONSCIENTIOUS OBJECTOR TO PERFORM ALTERNATIVE SERVICE OF A CIVILIAN NATURE IS A VIOLATION OF HIS RIGHTS UNDER THE FIRST, FIFTH, NINTH AND THIRTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION.

A THE WAR POWER DOES NOT EMBRACE ALTERNATIVE SERVICE.

The Constitutional authority which has been 1 cited by courst as permitting the Congress to require that alternative service be performed by conscientious objectors has been Artlcle I, Section 8, the so-called "war power". The right under the First Amendment to freedom of religion, the right under the Fifth Amendment to pursuit of one's occupation without having one's labor power appropriated by the state without due process of law, and the right guaranteed by the Thirteenth Amendment to be free from involuntary servitude, are given to the people of the United

States, and can only be impinged upon pursuant to some other enumerat d power given to the Congress by the Constitution.

Article I, Section 8 is a grant of power to Congress: "to declare war...and to make rules concerning captures on land and water; to raise and support armies,...; to provide and maintain a Navy;..."

In July of 1966, President Johnson establishwd a Nationsl Advisory Commission on Selective Service which was chaired by Burke Marshall. The report of this Commission was published in February, 1967, and submitted to the President of the UnitedStates. It discussed "national service" as an alternative to military service and said (page 9):

> The Commission found, first of all, that there are difficult questions of public policy - and a lack of Constitutional basis - involved in compulsory national service. Second, it concluded that no fair way exists to equate voluntary service programs with military service. Volunteer national service must, then, be considered on its own merits unrelated to military service. (Emphasis added.)

Thus, the National Advisory Commission on Selective Service finds that alternative service is not directly or even indirectly related to military service. It cannot be subsumed under Article I, Section 8 of the Constitution, unless it can be demonstrated to be a necessary and proper measure needed to carry out a granted power.

Some cases have suggested that alternative service is necessary to the raising of an army as a means of preserving discipline and morale in the armed forces. They have grounded such alternative service thereby to the power of Congress to raise armies and to take effective measures to preserve the efficiency of said armies. See: Howze v. U.S., 272 F. 2d 146 (1959); U.S. v. Hoepker, 223 F. 2d 921.

However, none of the cases has been able to advert to any factual evidence demonstrating the point that morale was being

affected by the fact that conscientious objectors were not being given alternative service. This is a subtle and complicated factual question, far beyond the scope of judicial notice.

B. <u>WHERE THE GOVERNMENT HAS THE POWER TO WITHHOLD BENEFITS FROM ITS CITIZENS, IT DOES NOT HAVE THE LESSER POWER TO GRANT SUCH BENEFITS UPON AN UNCONSTITUTIONAL CONDITION.</u>

The line of cases which has discussed the status of the conscientious objector has assumed that alternative service is a necessary concomittant to the privledge of not performing military service, and has further assumed that any condition may be placed upon the proveledge granted by the government. As those conditions are in derogation of the First, Fifth, Ninth and Thirteenth Amendments, and there is no constitutional provision which supports them, they must be considered un-Constitutional conditions to the proveledge of conscientious objection.

The Fifth Amendment requires that a person cannot be deprived of his life, liberty or property without due process of law. A person's labor power, which is his only way of earning his bread in this world, is a property which is his most valuable asset. Furthermore, a person's ability to sell this labor power on the free market is a very basic part of his liberties as guaranteed by the Constitution. Therefore, any curtailment of that liberty and any taking away of that property can be done only in violation of the Fifth Amendment, unless it is done in pursuance of some other article of the United States Constitution which is of equal dignity to that Amendment. The only such Constitutional provision which has been cited which would permit alternative service is the war powers provision of the Constitution. As has been pointed out above, there is no demonstrated connection.

In addition to the Fifth Amendment of the Constitution the conditioning of conscientious objection on the performance of alternative service is a clear violation of the Thirteenth

amendments to the United States Constitution in that it requires involuntary servitude for a person who has not committed a crime. Cases such as U.S. v. Niles, 22 F. Supp. 382 (1954), aff'd 220 F. 2d 278; Richter v. U.S., 181 F. 2d 591; Heflin v. Sanford, 142 F. 2d 798; Badger v. U.S., 322 F. 2d 902 (1963); Howze v. U.S., 272 F. 2d 146 (1959), have assumed without true analysis that the Congress has the right to provide alternative service to a person who is conscientiously objecting to war even though there is no evidence that such alternative service is in any way related to military necessity

The question of a civilian draft was brought up during the Second World War, and was discussed in the case of Lichter v. U.S., 334 US 742 (1947). There, the court said:

> In the light of the compelling necessity for the immediate production of vast quantities of war goods, theefirst alternative, all too clearly evident to the world, was that which Congress did not choose, namely, that of mobilizing the productive capacity of the nation into a governmental unit on the totalitarian model. This would have meant the conscription of property and of workmen. It would have meant the raising of supplies for the army in much the same manner as that in which Congress raised the manpower for such armies...Faced with this ironical alternative of conv rting the nation in effect to a totalitarian state in order to preserveitself from totalitarian domination, that alternative was steadfastly rejected.

The Supreme Court has held on numerous occasions that where bona fide needs of the State threaten Constitutional liberties and there are alternative means to achieve the end that the state feels is necessary, it must employ those means which restrict liberty least. Sherbert v. Verner, 374 U.S. 398; NAACP v. Button, 371 US 415 (1963); Braunfield v. Brpwn, 356 US 599 (1961); Shelton v. Tucker, 364 US 479; Cramp v. Board of Public Instruction, 368 US 278 (1961). In the case at bar the state can demonstrate no reason for placing the defendent in the Los Angeles Dept. of Charities remotely related to powers granted Congress. The placement violates the Thirteenth Amendment to the United States Constitution. There is absolutely no showing on the part of the

Government that has any overriding purpose in curtailing this Constitutional freedom of employment by placing the defendent in a menial position in a state institution merely because he has conscientious scruples against fighting in the military service.

It is respectfully submitted that the defendent's motion must be granted.

PETER FRANCK
JEANNETTE HERMES

By PETER FRANCK
Peter Franck
Attorneys for Defendent

Ult. authority in Nat'l Director

(~~[illegible]~~ holding that reliance on approved lists is not an abuse of discretion.)

Questions: Abuse of discretion to refuse

1. Meaning of ~~the~~ "community" Is it in his community?

no jud gloss

∴ plain meaning

~~[illegible]~~

coextensive w/ juris of local board -

but Bd's juris still has juris if move.

2. ~~Abuse of discretion to refuse to approve~~ Can Board refuse to assign him to employment which is admittedly in national interest?

A. Stat - "which Board deems appropriate"

[Reg - "not in own community unless desirable in the national interest"]

Under Lawson, Board must consider empmt appropriate. - Quere.

There Ct held Board could assign D to work at ~~the~~ a NJ State Hospital despite D's request to work at Goodwill Industries. continues to

Distinguishable.

At time of request, Goodwill not on ~~list~~ approved list.

However Reg - see above -

B. Effect of Reg -

weighing of

CO

20.8(7)

Admin Regs Armed S 20.2

failure to Regt for non-combatant wk of natl imp.
Crim Law 1184

Assignmt to Civilian wk - Armed S 20.3(6,7)
20.10(1)
20.1(2)
20.6(3)

Desig of place of empmt Armed S 20.8(6)
Due process in procedure Const Law 318

Const Law 42

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final determ by natl director
⇒ Mang v. US 339 Fsd 369
Univ Military Training + Service Act §§1 et seq - 12
~~50~~ 50 USCA App §461 et seq 462
18 USCA §3231

⇒ US v. Lawson 337 Fd 800. Cert denied, rehearing denied

UMT+SA §6(j) 12; 50 USCA App 456-62

Rodenko v. US 147 Fsd 752 (1945)
cert + rehearing denied.
Johnson v. US 285 Fsd 700 (9A, 1961)
rehg denied.

UMT + SA 6j
= 50 USCA App §454(j)

... "Any person claiming exemption from combatant training + service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to ~~to~~ a noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to ~~such~~ participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such reg as the Pres may prescribe, to perform for a period equal to the period prescribed in [sec. 454(b) - App] such civilian work contributing to the maintenance of the natl health/safety, or interest as the local board may deem appropriate and any such person who/knowingly fails —

✓ Reese v US CA Cal 1955 225 F2d 764

✓ Pomorski v. US CA Mich 1955 222 F2d 106 cert denied...

US v. Sutter DC Cal 1954 127 F Supp 109.. ok 5th + 13th.

US v. Niles DC Cal 1954 132 F Supp 382. aff'd, cert denied not unconst dels

{ Ory v. US CA La. 206 F2d 500
{ Neal v. US CA Tex 203 F2d 111 cert denied
abuse of local board's discretion must be clear.

US v. Werner DC Pa. 134 F Supp 447. aff'd 351 US 906 cert denied. 5th + 13th

78 CJS. §56 - Schools
p. 771 n. 57 A.

State authorizes creation of community hs. districts. Its territory to
"people with common interests, and associations, with a community center, where the people are accustomed to gather & intermingle."
People ex rel Snowden v. Hurst.
81 NE 2d 449, 401 Ill. 148

↑
People v. Owen, 137 NE 836, 306 Ill 330.
52 → 158 NE 492.

State requires ~~that~~ districts that districts be:
"compact, contiguous & adjacent."
Husser v. Foush 53 NE 2d 949, 952
386 Ill 188

People ex rel Frailey v. McNeely
34 NE 2d 608
376 Ill. 64.

State ex rel Tudor v. Vance 24 NE 2d 673, 674
374 Ill. 446.

People v. Cowen (1932)
Appeal from judgment of ouster resulting from petition in nature of quo warranto against board of ld of "pretended" Community HS district in Bond Co, Ill.; jt reversed. Area held to meet statutory standard of being "compact and contiguous" (Area is approx rectangle $7\frac{3}{4}$ m. by $5\frac{3}{4}$)

50 App § 456 (j)

... Any person claiming exemption from combatant training & service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such ~~combatant~~ noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the Pres may prescribe, to perform for a period equal to the period prescribed in § 4(b) [Section 454(b)] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate ...

9b.
23b
35b
36a

LEFT FOR YOU BY STEPHEN ZAHARA

A MATTER OF INDIVIDUAL CONSCIENCE

" If the individual is convinced that he is being forced out of his Christian or human vocation into something which, therefore, requires him to disobey God or conscience, he has no alternative but to refuse to comply with the State's demand, perhaps resist it nonviolently, and take the consequences. He will still probably be forced out of his accustomed place and work but his non-cooperation with the State's demand at this point becomes his true vocation. "

A. J. Muste

in Of Holy Disobedience

Stephen Zahra, a Case Worker in New York City's Department of Social Services, is challanging General Lewis B. Hershey's authority to determine what constitutes appropriate work "in the national interest" for conscientious objectors performing alternative service.

By not permitting General Hershey to decide for Stephen what or where his civilian activity should be, Stephen is now facing prosecution for refusing to obey a compulsory work order issued to him by Selective Service. The courts will then have to decide the meaning of Section 1660.21 paragraph A of Selective Service Regulations. If found guilty

of violating Selective Service law, Stephen faces a maximum penalty of five years in prison and ten thousand dollars fine.

Stephen Zahra originally sought to obtain approval from Selective Service for his present position as Case Worker but learned that General Hershey does not regard this work as the equivalent of military service because it does not "discommode" Stephen and because Hershey does not consider work in New York City (within 50 miles of Stephen's home) a "sacrifice".

In reply, Stephen argues that it is wrong to regard as meaningful only that work which forces the C.O. to be discommoded so that a "sacrifice" is evident on behalf of the C.O. to serve his country. This type of "sacrifice" typifies the thinking of men who thought it inconsequential for Christians to place just a pinch of incense before Ceasar's image. In this way, Stephen's case questions, on a basic level, the very notion that Selective Service and General Hershey have the right to "channel" young men into those jobs which they deem are important to society.

1660.21 GENERAL PROVISIONS RELATING TO ORDERS BY THE LOCAL BOARD TO PERFORM CIVILIAN WORK. (A)No registrant shall be orderedto perform civilian work in lieu of induction in the community in which he resides unless the local board deems the performance of such work in the registrant's home community to be desirable in the national interest.

Stephen has summed up his case in these words:

" When I wish to serve my country, as I believe I am now doing in my present position as Case Worker, I will serve it because I desire to do so, and not to satisfy the authoritarian whims of a war-machine bent on casting human beings in the mold of conformity, mechanization and violence. Selective Service tells me that I may be permitted to do work in the national interest, but I am unconvinced that General Hershey is qualified to judge what is and what is not in the national health, safety and interest. Surely, since the present war of atrocity in Viet Nam is most definately NOT in the national interest, how can Selective Service, which supports the war, determine what really is in the national interest?"

THE CITY OF NEW YORK
DEPARTMENT OF WELFARE
250 CHURCH STREET
NEW YORK, N. Y. 10013
TELEPHONE 344-8700

MITCHELL I. GINSBERG
COMMISSIONER

March 10, 1967

Selective Service System
Local Board No. 49
271 Washington Street
Brooklyn, New York

RE: Stephen Zahra
Selective Service No. 50-49-43-340
Classification 1-O

Dear Sirs:

Mr. Stephen Zahra is a caseworker in good standing in the Department of Welfare. We feel that the work he is engaged in is extremely important and essential. Coupled with this, is the difficult problem faced by the Department in recruiting college graduates to fill the available jobs as caseworkers.

Since Mr. Zahra has already been classified as a conscientious objector, we respectfully request that Mr. Zahra be assigned by you to the Department of Welfare. This would enable him to continue the highly constructive and difficult work he is performing in our attempt to solve some of the problems faced by the large number of people on Welfare.

Thank you for your serious consideration.

Sincerely,

Mitchell I. Ginsberg
Commissioner of Welfare

If Stephen's case is to be won at all, it can only be won in the higher courts. Although his attorney has waived legal fees, court costs and legal expenses have been estimated at between eight and ten thousand dollars. Funds are urgently needed to meet these expenses!

THE STEPHEN ZAHRA DEFENSE FUND

SPONSORS:

Maris Cakars, Projects Director, WRL
David Dellinger, Chairman, National Mobilization Committee to End the War in Viet Nam
Ralph DiGia, Administrative Secretary, WRL
Robert Greenblatt, Professor, Cornell University
Judith Mage, President, Social Service Employees
David McReynolds, Field Secretary, WRL
Eric Weinberger, Administrator, Fifth Ave. Viet Nam Peace Parade Committee

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The Stephen Zahra Defense Fund
C/O The Catholic Worker
175 Chrystie Street
New York, N.Y. 10002

I wish to make a contribution to The Stephen Zahra defense fund to help defray the cost of legal expenses. Enclosed please find my check or money order for $.....

Name.....

Address.....

State.....Zip Code.....

____ Please keep me informed of further developments in this case.

US v. Lawson. 337 F2d 800 (3rd Cir 1964); cert den 380 US 919, reh den 380 US 969, 381 US 937

D convicted of violating UMT+S A for failure to comply with order to report for civilian work at state hosp. D was offered job as institutional attendant at State Hosp. he wrote Bd that he was working for Brodnell Inc. + thought this fulfilled his obligation. Bd sent him notice that since he was employed at Newark Selective Service HQ he was not entitled to a deferment as a teacher since it appeared on a list of approved agencies at an earlier period (not on approved list on D.) at that time, approved in other state. State Director refused to approve Brodnell, citing 50 CFR §1660.21(a) (1962) - can't assign to own community.

Ct held, among other things, that Local Bd's order was valid.

P's claim that as a volunteer he was free to make choice of work, rejected he must find work that the Board determines is satisfactory, at 816. "Moreover, that employment, whether voluntarily engaged in by the registrant or chosen for him by the Board, was in any case to be employment considered appropriate by the Board, and not just any employment, private or non-profit, which suited the whim of the registrant." citing 50 USC App §456(j).

Claim that Board abandoned duty to exercise own discretion by using Nat'l + State Selective Service authorities' lists of employers rejected. Necessary to achieve uniformity.

cited in Hang

~~336 F Supp 456~~

45 AL 303 s

Hang said Nat'l Director has ultimate authority so to rely on lists is not an abuse of discretion.

More Cases

US v. Sage DC Neb 118 F. Supp 53 arbitrary, or capricious exercise of discretion violates due process.

US v. Hoy CA 2 11 '53 233 F 2 921 cert denied

Mark: 3 Fed 2d. cert denied 351 US 951

355 Fed 2d 641

Zahra.
728-0345 home. Leigh Bernin 675-4044
721-7110 - parents. Defense ~~Co~~ fund.

When physical - did Zahra have it?
pre-induction - only this yr-

---

how local boards - geog'l'y set-up?
coextensive w/ what?
political when set-up (assemb'y district)
or school -
/Wards/ in Penna.

Tahrim? 215-563-1480

573-4171
4 2nd St Lib.
Govt Room 203
Background of Selective Service.
Blue Books
State Director sets up - Albany 518-472-3632
Law requires one per county
(legislist?

[illegible]

[illegible]

UMT + SA (j)
= 50 USCA App §456(j)

... "Any person claiming exemption from combatant training & service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to ~~be~~ a noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to ~~such~~ participation in such noncombatant service, in lieu of such induction, be ordered by his local board, subject to such regs as the Pres may prescribe, to perform for a period equal to the period prescribed in [sec. 454(b) - App] such civilian work contributing to the maintenance of the natl health, safety, or interest as the local board may deem appropriate and any such person who knowingly fails ...

✓ Reese v US CA Cal 1955 225 F2d 764

✓ Pomorski v. US CA Mich 1955 232 F2d 106 cert denied.

US v. Sutter DC Cal 1954 127 F Supp 109 - rev 5th - 13th

US v. Niles DC Cal 1954 122 F Supp 382 aff'd, cert denied not unconst delg

{ Org v. US CA La. 206 F2d 500 about 4 local boards have refused to be sued
{ Neal v. US CA Tex 208 F2d 11 cert denied

US v. Wenner DC Pa. 137 F Supp 417

US v. Sicola DC Ill 1955 132 F Supp 746

CO

20.8(7)

Admin Regs Armed S 20.2

Failure to Rept for non-combattant wk of natl imp.
Crim Law 1182

Assignmt to Civilian wk - Armed S 20.3 (6,7)
20.10 (1)
20.1 (2)
20.6 (3)

Desig of place of emplmt Armed S 20.8(6)
Due process in procedure Const Law 318

Const Law 42.

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final determ by natl director
⇒ Mang v. US 339 F Supp 369
Univ Military Training + Service Act §§1 et seq - 12
50 USCA App §451 et seq 462
18 USCA §3231

⇒ US v. Lawson 337 Fd 800. Cert denied, rehearing denied

UMT+SA §6(j) 12, 50 USCA App 456-62

Lodato v. US
Cert + rehearing denied
Johnson v. US

20 JAGJ 11 (51-Aug '66) inj relief against the military services

46 Yale 160 (N '66) . Hat's

24 N.I L Rev 123 (51'65) Selective service Ramifications in 1964.

13 J Pub L 16 ('64)

28 Albany LRev 82 (Ja '64)- Co Provisions.

[13 Butt L.R. 463 (Hunter '64)]

73 Yale {12-93 / 1459 (Je '63)

50 App § 454 (j)

... Any person claiming exemption from combatant training & service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such ~~non~~ combatant service, in lieu of such induction, be ordered by his local board, subject to such regulations as the Pres may prescribe, to perform for a period equal to the period prescribed in § 4(b) [Section 454(b)] such civilian work contributing to the maintenance of the national health, safety, or interest as the local board may deem appropriate ...

96.
23b
35b
36a

ZALECKI, LEONARD, 1969 (DISCRIMINATORY FIRING)

Please Retain Original Order

LEON M. DESPRES
ALDERMAN, 5TH WARD
OFFICE: 1623 E. 55TH STREET (60615)
TELEPHONE: BUTTERFIELD 8-7411

CITY COUNCIL
CITY OF CHICAGO

COUNCIL CHAMBER
SECOND FLOOR, CITY HALL
TELEPHONE: 744-6800

COMMITTEE MEMBERSHIPS

FINANCE

FEDERAL AND STATE LEGISLATION

JUDICIARY

PLANNING AND HOUSING

POLICE, FIRE, CIVIL SERVICE, SCHOOLS AND MUNICIPAL INSTITUTIONS

July 28, 1969

Mr. Carl Rachlin
164 Madison Avenue
New York, New York 10016

Dear Carl:

The enclosed material summarizes the case of Leonard Zalecki, a construction project timekeeper, who was fired from his job because white southern construction workers objected to a "Yankee" timekeeper. E.E.O.C. has declined to intervene. Do you have any legal or practical suggestion?

Sincerely yours,

Leon M. Despres
Alderman, Fifth Ward

LMD:gal
Enclosure

638 C. C. 4 8-66

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
164 MADISON AVENUE
NEW YORK, N.Y. 10016
(212) 532-8216

G-8

file

August 6, 1969

The Honorable Leon M. Despres
Alderman, 5th Ward
1623 East 55th Street
Chicago, Illinois 60615

Dear Mr. Despres:

We have reviewed your letter of July 28, 1969, and the enclosed information pertaining to the discharge of Leonard Zalecki. There are several unclear points, but nevertheless, it would appear that there are no practical legal remedies.

First, the discharge though clearly discriminatory, does not fall either within the Federal or Illinois Civil Rights Statutes. 42 U.S.C. Sec. 2000e-z, states, "It shall be an unlawful employment practice for an employer. . .to discharge any individual. . . . . because of such individual's race, color, religion, sex or national origin." The discrimination suffered by Mr. Zalecki, a regional kind of discrimination, does not come within the civil rights statutes.

Illinois Statute Ann., Title 48, Section 853, provides:

> "It is an unfair employment practice (a) For any employer, because of the race, color, religion, national origin or ancestry of an individual to refuse to hire, to segregate, or otherwise to discriminate against such individual with respect to hire, selection and training for apprenticeship in any trade or craft, tenure, terms or conditions of employment. . .(e) Nothing in this Act shall preclude an employer from hiring or selecting persons for (1) any reason except for the unfair employment practices specifically prohibited by this Act."

A normal reading of this language would seem to dictate the conclusion that Mr. Zalecki would not be protected by the Illinois Statute. However, if Mr. Zalecki has not tried this remedy, he could file a complaint with the Illinois Fair Employment Commission.

Contributions are deductible for income tax purposes

■ *chairman of the board:* Nils Douglas ■ *chairman of the executive committee:* Andrew E. Norman ■ *president:* Marvin Rich ■ *vice presidents:* William S. Ellis, Nanette Sachs ■ *secretary:* Ezra Levin ■ *treasurer:* Shelley Appleton ■ *executive director:* Ronnie Moore ■ *leadership director:* Shirley Lacy ■ *legal director:* Carl Rachlin ■ *technical assistance director:* James Felder ■ *BOARD OF DIRECTORS:* James Baldwin ■ Katrina McCormick Barnes ■ Allan Barton ■ Jonathan Bingham ■ Canon James P. Breeden ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S.J. ■ Michael O. Finkelstein ■ Doris Freedman ■ James T. Harris, Jr. ■ Claude Heckscher ■ Norman Hill ■ Arthur Kimmelfield ■ Dr. Archie Lacey ■ Jeremy Larner ■ Joann List Levinson ■ John Lewis ■ Leon Modeste ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Edward Norton ■ Richard J. Schwartz ■ Elaine Slater ■ Rowland Watts

A possible, though doubtful, approach might be a contract damages lawsuit. The difficulty is that under Illinois law, an employment contract is terminable at will absent an agreement as to duration. Thus, the question is whether there was a duration provision in the written offer to Mr. Zalecki, although such an agreement need not be explicit. (In one Illinois case where there was a letter stating that plaintiff employee would receive 1/2 of moving expenses now and the balance after one year, the court interpreted the employment contract to be of a one-year duration.)

Probably the most feasible solution for Mr. Zalecki would be to utilize his union's grievance procedure and obtain reinstatement. It should be noted that the National Labor Relations Act provides that a statutory bargaining representative owes to the employees the duty of fair representation to all for whom it bargains. Redress for failure to fairly represent can be secured through the National Labor Relations Board.

Finally, Mr. Zalecki does have a contractural right for severance pay if such a provision is contained in the written offer of employment, or in a later formally signed agreement. If there is no such agreement, Mr. Zalecki can still recover if in fact Beasley Construction makes a practice of granting severance pay and has done so in the past to other employees.

As noted above, the most fruitful approach might be for Mr. Zalecki to use union grievance procedure if he has not yet done so. This is the only procedure that offers the hope of reinstatement.

If there are any further facts, information or questions, please contact us.

Sincerely,

Carl Rachlin, Esq.
Legal Director

CR:b

BACKGROUND AND CIRCUMSTANCES OF MY ARBITRARY & DISCRIMINATORY DISCHARGE BY THE SUPERINTENDENT OF THE JOHN F. BEASLEY CONSTRUCTION CO.

About the 22nd or 23rd of April, 1969, I received a letter from the JOHN F. BEASLEY CONSTRUCTION CO. and signed by Mr. L. Amar Greene, informing me that they would be interested in engaging my services as a timekeeper. I was already employed by another company at the time I received their letter and therefore not desperately in need in accepting their offer. However, in hopes that I might be able to improve my situation, I arranged for an interview with Mr. T.L. Woodard, the man in charge of their entire Chicago operation. After giving Mr. Woodard a run down of my qualifications and experience he responded by indicating he was impressed with them and asked, in fact almost pleaded with me to fill the job opening. I told him, in all fairness, that I had never had actual direct experience as a timekeeper, but that I had done work related to it as a field clerk in construction. He said not to worry about that. He thought I had all the necessary potential for learning the job. The quality and quantity of my work later proved the correctness of his judgment. Within a week I had the job fully under control and was doing very satisfactory work. I received one very minor complaint about my work on the Weekly Cost Analysis. It originated from the Dallas, Texas main office and was of very little significance, a small technicality concerning some small bit of information that they want added to the analysis. This was immediately taken care of by me.

I had complaints from a total of 3 workers on our payrolls concerning the amounts on the paychecks they had received. I was wrong on one of the amounts and the other 2 workers had simply miscalculated on their own. Considering the fact that I had 60 men to handle on the payrolls and issued checks to each and everyone of these each week, and that I did so for 9 weeks (the length of my employment with this company) the number of errors committed was very small indeed. The workers always received their paychecks promptly. There was never any complaint about that.

At no time, during the entire period of my employment (outside the minor complaint at the beginning of my employment from the Dallas office) were there any complaints, reprimands or warnings lodged concerning my job performance. My attendance, outside of 1 day taken off for emergency dental treatment, was perfect. There were never any altercations between me and the other employees or members of the supervisory staff. The superintendent, Mr. Kenneth J. Runyon, who discharged me never complained about the quality of my work. I felt secure in my job and justly so.

During my interview with Mr. T.L. Woodard, he offered several inducements to lure me away from the job I already hel d. They were as follows:

1. $10.00 more per week in base pay.
2. Considerable overtime, which would further fatten my pay check.
3. Pay for any day I might have to take off due to illness.
4. And even as he said, "If you ever want a couple hours off during th day to buy yourself a suit of clothes, just let the superintendent, Mr. Runyon, know and he will permit you to do so."

I never took advantage of the last inducement.

I would like to interject at this point, that Mr. T.L. Woodard, the man who employed me, resigned a week or two before I was discharged to go into business for himself somewhere in Tennessee. This, I'm sure, opened the door and set the stage for what was to happen to me after he left. I feel a definite and direct connection between the two occurrences.

In order to establish a record of my proficiency as an employee I feel it important to list the duties that my job consisted of. They were numerous and added up to a program of some magnitude. I performed them all, although on occasion, it was necessary to work extra overtime to keep current with the heavy demanding schedule. They consisted of the following:

1. Keeping one payroll of 45 employees. Keeping track of the time the men worked and all calculations connected with determining the amounts of their pay was kept thereon. This particular payroll covered the job project located at 40 S. Clark St., Chicago, Ill.

2. Keeping another payroll consisting of 15 men. This required the same handling as the above. It covered the job project at the John Hancock Building, 875 N. Michigan Blvd, where the company I worked is erecting a television tower.

3. A Daily Job Progress Report for the Beasley Construction Co., my employer.

4. A Daily Job P rogress Report for the Gust Rosberg Construction Co., the general contractor for the job at 40 S. Clark St.

5. A daily breakdown of job cost.

6. A Weekly Cost Analysis based upon the daily breakdown of job cost.s.

7. A Weekly Labor Cost Report to the general contractor, Gust Rosberg Construction Co., for insurance purposes.

8. The monthly payment of invoices for materials received on the job from various vendors.

9. Handling all incoming phone calls. This usually required my going out onto the job to search out the superintendent to whom the calls were usually directed.

10. Taking care of the monthly payment of the pension and benefit fund for each employee

11. Some of the men(and it was always those who had come up from the Southern states with the Beasley Construction Co.) asked me to cash their checks for them at the bank across the street and some even requested me to make out money orders for them while I was at it. This was certainly outside the duties of my regular job and actually distracted me from it somewhat. However, I did accomodate them until the duties of my prescribed work became too demanding. When I ultimately had to refuse to perform this favor, some of them actually seemed quite annoyed.

Obviously, judging from the total performance required, my job consisted of much more than simple time keeping. I was doing all of the above work described within one week from the date of my hiring and did so practically without instruction and without prior experience in most areas of it.

As previously mentioned, my attendance on the job was good with the exception of 1 day that I had to absent myself for emergency dental work. I reported in that day via phone and explained the reas n for my absecence. Also, as previously mentioned, I was told by T.L. Woodard that I would be paid for any day taken off for such a cause. Naturally, then, as timekeeper, I credited myself on the payroll sheet for 8 hours for that day. When I subsequently turned in my check for that week to be signed by the superintendent, Mr. Runyon, he remarked, "You got too many hours on this check haven't you, Buddy?" I reminded him that Mr. T.L. Woodard

and made an agreement with me to pay me for such days. He replied, "Well, he didn't tell me that." I said, "Well, he did tell me." He replied, "Well, he isn't here any more, is he?" (As I've stated, Mr. Woodard had resigned about 2 weeks prior). It was at this point that the superintendent, Mr. Runyon, indicated that he could and might renege on Mr. Woodard's word. Eventually, but reluctantly, he approved my pay for that day. This occurance, however, set up a friction in addition to a general unfriendliness and vaguely hostile tone and manner that Mr. Runyon had been displaying toward me prior to this. I would like to add, at this point, that Mr. Runyon had been brought from the South by the Beasley Construction Co. to supervise the job at 40 S. Clark St. His regional origin will prove pertinent as I go on with my explanation of the events that followed.

EVIDENCES OF FAVORITISM AND DISCRIMINATION

1. Men brought up from the Southern part of the United States (principally Tenne, Oklahoma and Arkansas) comprised approximately 20% of the total work force. None of these men, during the time I worked for the Beasley Construction Co., was ever discharged. One of them did resign without notice one day. He came in a day or two later staggering drunk and demanding his pay. Under both company and union rules, since he had quit suddenly, there was no obligation to pay him off until the following payday. I told him, an actual fact, that I could not issue out a check to him without Mr. Runyon's approval and signature. I told him I would be glad to make it out if Mr. Runyon OK'd it. He asked how much he had coming in pay and when I told him he insisted in a slurred, angry voice that he was being cheated out of several hours work time. He started an argument and appeared to be on the edge of violence. Mr. Runyon appeared in the doorway just then and inquired what the trouble was all about. When told, he also checked the man's hours out and informed him that I was right about the number of hours he had put in. He then authorized me to issue a check for the amount of money he had coming. He pampered and definitely treated this man with kid gloves in spite of the fact that he was uncontrollably drunk and creating a disturbance. But then, of course this man was one of his compatriots from the South. One of the Chicago Area workers on the job would have been told to leave and return on payday for his money. As it happened, this drunken man called up the next stating that he had lost his check and wanted a reissue of another one.

2. Men from Chicago and vicinity made up about 80% of the total work force. A significant number of these men were abruptly discharged from the job during the time I was with the John F. Beasley Construction Co. Please note, by contrast, what I have underscored in the previous paragraph. Some of the local men quit, one because of unsafe job practices. The one who has quit and who has since returned to the job, informed me that he and many others of the Chicago Area workers have clearly noticed the favoritism to the Southern workers that I have mentioned and that he would be willing, along with some of them, to testifyin behalf of my charge to that fact.

3. When I was hired by the John F. Beasley Construction Co., I was told by Mr. T.L. Woodard, that as long as I was in their employ, that the contents of the payroll sheets were to be held in confidence. I was not exactly sure what was meant by this or exactly what the reason was, but I agreed to abide by the regulation. It wasn't long, in fact, Immediately, that I did see the reason for it. Mr. Runyon, the superintendent, of course, was understandably receiving the largest salary and another man from the South who had been appointed to the foreman level was also receiving considerably more money above the union scale for Iron workers. So far everything sounds legitimate, but I noticed that 2 or 3 other (all again, from the South) were also receiving pay considerably above union scale. At this time, everyone of the workers from the Chicago area was paid right at union scale, no more. Later on, one or two other men from the South were elevated to similar pay levels. One local man did

later got a raise to above the union scale, but he was the only one. So the situation when I left the company was thus: 6 to 8 men from the South (or about 20 to 30% of their group) and 1 man from the Chicago area (or 1 to 2% of their group) were receiving wages above union scale. There's no need to demonstrate further the unfairness that such a disproportion indicates.

Incidentally, I had an unconscious habit of leaving the payroll sheet out in the open in full view whenever I had to leave it temporarily to take care of some other task. Mr. Runyon, the superintendent, warned me not to do so, saying, "The guys on the job like to snoop around and might get a look at it. It could cause friction among the men if they saw it." Yes indeed, it certainly could and would.

4. I frequently heard remarks from the Southern workers reflecting their regional attitudes. One directed to me, although put in a facetious way, was, "It ain't bad enough that we got Yankee ironworkers on the job, we got to have a Yankee timekeeper, too." There were also numerous remarks from them regarding what they thought to be the unfriendliness of the people up North. Other remarks indicated that John F. Beasley Construction Co. made a mistake in ever contracting a job up North since the relations between the union and their company were not as cordial as they were down south. I had heard from local iron workers that a job previously contracted by Beasley in the Chicago area had been closed down by the iron workers themselves because of poor and unsafe working conditions on the job. This was never verified, but I did not doubt the possibility of this since I, personally, had a slight scent of what was meant by poor workin g conditions.

I worked in a dirty, dingy, hot unventilated office. When I requested an air conditioner that would alleviate at least one bad element of this general condition 2 or 3 weeks passed by without any action being taken. I repeated my request a couple of times during this period. The air conditioner finally arrived and simply laid there for another 2 or 3 weeks. The superintendent, Mr. Runyon, ignored me when I asked if we could get someone to install it. It still had not been installed when I was discharged from the job.

5. At lunch time the Southern workers congregated and ate lunch together with their Southern superintendent, Mr. Runyon. It constituted a very closed clique and I saw no efforts to fraternize with any of the local workers. All this after their comments about how unfriendly "Yankees" were.

6. The Southern workers were usually grouped together, huddled around the superintendent in the office when I arrived for work in the morning. I always greeted them with a "good morning" and usually received a greeting in response. - - - up until about a week or two before I was discharged. From then on I was greeted with silence as though I was not even there. I could not understand this sudden cool and peculiar behavior at the time. Now, in retrospect, I can. The emotional stage was being set for my dismissal. From their point of view, it would be easier to oust me if they were not on good terms with me. It's a strange sort of rational ization, but I think this was the actual intent. Now- - I would like to make this clear. From the day I arrived to work there to the day I left I always treated these peopl e with courtesy and friendliness, never felt any bias or animosity toward them and never made any comments that could have been construed as hostile or unfriendly.

THE LACK OF COOPERATION FROM THE SUPERINTENDENT

It was necessary, in order to get my payroll sheets balanced on time and to get the paychecks to the workers on schedule, that I be informed of the hours put in by the men as early as possibl e on Wednesdays. I had to relay the payroll information to the Chicago office on Wacker Drive by 10:00 A.M. on Thursday so that the correct amount of money could be requested from the Dallas office and which was to cover

the Friday distribution of pay checks. Consequently, I asked, Mr. Runyon if he could anticipate ahead of time, at least by 3 or 4 hour, how much time the men would be working that day. This would enable me to get a jump on my work and eliminate the necessity of working overtime to get the payroll in balance. He promised to comply with my request, but rarely ever did. I was usually informed at the last minute of the day as to the number of hours the men had worked. Naturally, I had to stay on at work to make all the calculations and get the payroll into balance. Sometimes, if I encountered difficulty in balancing it out, I had to stay at work as late as 8:00 or 10:00 P.M. The foreman in charge of the job at the 44 Hancock Bldg, Mr. Walter Hansen, was uncooperative in the same way. Often I would not get the time the men had worked on that job until Thursday morning. As previously, Mr. Lamar Greene at the Wacker Drive office wanted all my figures in by 10:00 A.M. Thursday so that he could telegram Dallas, Tex. for the money.

CIRCUMSTANCES OF MY SEPARATION FROM THE JOHN F. BEASLEY CONSTRUCTION CO.

On Monday morning, June 20th, 1969, I arrived for work as usual. I noticed when I walked into the office that some one I had never seen before was sitting in my chair at my desk. Since signing up new employees was also part of my job, I assumed that he was there for that purpose. Suddenly, Mr. Runyon walked into the office, came over to me and said, "Buddy, you're not working for this company anymore. This man is taking your place. You can stay and show him how the job is done for today." Absolutely no explanation was offered as to why I was being discharged and obviously no notice. I had an exchange of words with Mr. Runyon and demanded my check. He told the new timekeeper who was to be my replacement to make it out. One thing struck me immediately. My replacement apparantly could not type. He proceeded to write out my check in long hand. To verify my suspicions about this I contacted one of the iron workers on the job on each of the two following paydays. He informed me that all of the checks had been written out - - not typed. Therefore, I must assume that the rest of the work (payroll sheets, daily reports, etc.) are also being handled in the same unbusinesslike manner. In at least one area, a simple clerical skill, this man was less qualified than I.

The clincher, and this brought the real reason for my dismissal into sharp focus, was when then man who replaced me began to talk. I t was with an unmistakably pronounced Southern dialect. It all became crystal clear at that moment. They had pulled one of their buddies up to Chicago over the weekend. This, then, accounted for the abruptness of my dismissal and the refusal to give me a reason for it. It was probably not certain to Mr. Runyon on the previous Friday when I left work that hi man could be able or would be able to make the Monday morning appearance.

When I went to the unemployment office to sign up for my benefits, the deputy who was assigned to me called the John F. Beasley Construction Co. to find out the cause for my dismissal. Ironically, the timekeeper who replaced me answered the phone and gave him the alleged reason. It was "that he did not measure up to our standards." In a certain sense I certainly did not measure up to them. I was lacking the main qualification. I was from the wrong part of the country.

Here is my charge against the John F. Beasley Construction Co. Discriminatrily discharged without notice, without cause being given and without just remuneration in the form of severance pay. And, in addition, that it is a result of a regional kind of nepotism that is either the policy of Mr. Runyon, the company or both.

I pose this question. Can an out of state company come to Chicago, compete with local companies on an equitable basis, profit therefrom and treat local help as they do with impunity?

I sorely regret that my limited verbal talent does not enable me to state my case more persuasively and convincingly than I have. It is hard to convey an injustice of this kind and really put it across completely. However, as I have put it, I've put together a sufficient pattern of discrimination to merit a legal hearing on it and also a legal decision in my favor.

Very Sincerely,

Leonard L. Zulenti
5451 S. Cornell Ave.
Chicago, Ill. (15)

I. Explanation of How I Came to Be Hired by Beasley of Dallas, Steel Erectors
Asked if hired to supervise on payroll confidential.
Rec'd. letter from Beasley telling me they would be interested in hiring me as a timekeeper. Explained in interview the following: that I had never done it but was willing, expressed confidence that I could perform. Quit & left the day, left the Co. 2 weeks before my discharge ready to take hire.
(a) To save me from the other job he promised me a little more $ (4.00 per hour).
(b) overtime
(c) pay for any sick days.
(d) Every time off during the day to buy clothes

II. Duties performed on the Job (starting April 28th)
Foreman's wife from me until last pay-day wife
(a) one payroll of 45 men (40 S. Clark St.)
(b) one " " 15 men (Hancock T. V. Tower)
(c) Daily Job Progress Report for Beasley & the General Cont.
(d) Weekly Cost Analysis.
(e) a daily breakdown of costs to conform into the foregoing.
(f) Weekly Material Report to Gen'l Contractor for Sub. Parties.
(g) Payment of monthly invoices (hampered somewhat because of not getting $ from Dallas)
(h) Keeping close calls & often going on job to find the staff.
(i) An attempt even to get me to cash their check & get M.O's for them. One man dissent abt it.

The above was much more than a timekeeping job & I handled it well - getting the paychecks to the men on time which was the major thing. Almost a half a days job. In addition I learned all this with practically none or a minimum of instruction & without prior experience.

III. Only Complaints Against My Work.
(a) Three men questioned the exts. of their check. I was wrong in 1 case (under paying a man $2). Miscalculated his O.T. (6 hrs a day also on Sat O.T.)

(b) Overpaid / one man on / payroll $2.00 each. Legend wrong on / man & others followed / a $20.00 error. Discovered error myself & pointed it out. Doc paid to forge it. Incidentally did one of these men complained of arsenic by their check.
(c) Forgot to get foreman's signature on check I made out for advance payroll but they were not mailed out this way.
(d) Broke the train from Dallas office stopped on to say I should put total of 9 labor on / it sheet of coal analysis.
(e) One of the 9 payrolls was off $2 on the final balance.

Never got a spoken or written compliment or reprimand on any job the last 2 yr. knew from all this that I was doing a creditable job.

IV. Attendance & Punctuality
(1) / days absence, Dental Work (Called in sick)
(2) Went home early the following Saturday (again for Dental Work)
(3) When bus. was changed from 8 to 6:30 from 7:00 to 5:30. about 10 days ago I got from my foreman cleared that with the foreman.
(4) Kept scrupulously honest time on my bus. orders. Asked to work O.T. alone.

EXHIBIT IV.

V Evidences of Favoritism & Bigotry
(1) Southerner made up abt 20% of work force. None of this forces ultimately was fired. One did quit. He made trouble, was put back with his folks.
(2) Several local men were fired.
(3) Some local men quit (one because of unsafe working practices) Has agreed to testify to unfavorable of discrimination by foreman also.
(4) Southerners huddled around the South. Gent Foreman at lunch time; sometimes a facetious remark about Yankees.

("Yankee" Timekeeper remark)

how they'd never "work in this town" again, how unfriendly Chicagoans were etc.

(5) 2 wks prior to my dismissal I was not even getting a response to my good morning's. No conditions ~~Southerners~~ Southerners were getting over.

(6) ~~Two~~ Southerners were elevated to Foreman & given considerably more pay.

(7) 2 or 3 others were slightly elevated in pay but somewhat less. Why were others getting more I think the I.W. Union would like to know it. I believe 1 local boy did get a slight pay raise above the union scale.

General Foreman told me to keep quiet & roll out of sight although sworn to confidence I did leave it laying around a lot.

VI. My Dismissal

Arrived at work 8:00 A.M. Mon. Ready for Work Another man was sitting in my place Assumed he was to be signed up for work. This, too, was part of my job.

Gen. Foreman told me I was no longer working there. Gave no reason & instructed me to show the new man the ropes before leaving. I refused & demanded my check. The new man made out my check in long hand, possibly indicating he can't type.

Biggest Revelation of all he spoke in an Unmistakable Southern Accent!!! Brought over the week-end by his Texas Buddy no doubt!

Summation: ~~He~~ Fired, no notice or cause given & no severance pay. Just can't adjust.

Question:

Why should a Texas outfit be allowed to make profits to be taken out of Chicago, treat local men as they do & why is there no law to protect Chicago workers from this injustice?

VII Possible but not probable Spots of Vulnerability as I see.

(1) My request for more $ or a lessening of the work load. → big pay differential between my pay & IW's pay is key.
(2) My advice on deductions.
(3) My departure from Newberg.
(4) " " " Goodrich.
(5) My inquiry about piping system.

VIII. Further Possible Valnerable Spots in Beasley.

(1) Rumor (to be verified) that they were once shut down in Chicago on a prior job by the IW's due to bad working conditions.
(2) Business agents call down about pig-sty housekeeping

Any Reprisals?

No specific pers. in command of Steelec left? Ranken took things over.

Please Retain Original Order

SUMMONS IN A CIVIL ACTION

D. C. Form No. 438 Rev. (6-49)

United States District Court

FOR THE

NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION.

64C 1684

CIVIL ACTION FILE NO.....

MORTON L. ZASLAVSKY

Plaintiff

v.

CONGRESS of RACIAL EQUALITY

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

plaintiff's attorney, whose address MORTON L. ZASLAVSKY 8YO W. NORTH AV.

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

ELBERT A. WAGNER, JR.
Clerk of Court.

Deputy Clerk.

ANNE I. MEAZ

Date: October 5, 1964

[Seal of Court]

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

JUDGE IGOE

FILED
1964 OCT 5 AM 9 45
CLERK
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MORTON L. ZASLAVSKY, Plaintiff	)	No. 64C 1684
vs.	)	In Chancery
CONGRESS OF RACIAL EQUALITY, TAYLOR JONES, III, and RICHARD BROWN, Defendants	)	Equitable Relief Sought

C O M P L A I N T

Now comes the plaintiff, MORTON L. ZASLAVSKY, and for complaint against CONGRESS OF RACIAL EQUALITY, hereafter referred to as CORE, and TAYLOR JONES, III, director of CORE freedom center at 1486 N. Larrabee Street, Chicago, Illinois, and RICHARD BROWN, and states as follows:

1. That CORE is a non-profit organization with offices at 38 Park Row, New York 38, New York, said organization being incorporated in the State of New York for the purpose of improving the status of the individual subdued by society and unable because of race, color or religion to obtain equal status with other individuals. That part of the expressed aim of CORE is to obtain equal housing standards and facilities for Negro residents in the United States.

2. That plaintiff, MORTON L. ZASLAVSKY, is a resident of Chicago, Illinois, and because of the diversity of citizenship, has filed th is suit for equitable relief in the United States District Court.

3. That on August 29, 1964, a letter was directed to plaintiff, MORTON L. ZASLAVSKY, from one RICHARD BROWN representing himself as a "Core Task Force Worker" complaining about conditions existing in certain buildings hereinafter detailed, and further stating in said letter "that we would like to hear from you on or before September 3, 1964, etc." That plaintiff refused to acknowledge CORE as an agent of any of the tenants and failed to correspond with the defendant, RICHARD BROWN; whereupon, on September 3, 1964, the defendant, RICHARD BROWN, had appeared at the office of plaintiff, at 820 W. North Avenue, Chicago, Illinois, and demanded an audience to discuss the complaints set forth in the letter of August 28, 1964. That defendant, RICHARD BROWN, refused to leave the premises voluntarily, whereupon plaintiff was obliged to call upon the Police Department of the City of Chicago to remove defendant, RICHARD BROWN, and h is associates from the premises.

4. That CORE or its representatives have solicited information from various acquaintances of the plaintiff as well as one JAMES TAYLOR, a maintenance man employed by plaintiff, as to the address of residence of the plaintiff herein.

5. That plaintiff fears that when his address is determined by CORE or its representatives, they shall then attempt to accomplish their aims by force or violence, or by other means contrary to the Laws of the State of Illinois.

6. That a great portion of the alleged complaints set forth in the letter of August 28, 1964, are totally unfounded and not required by the laws applicable thereto.

7. That formal complaints embodying the same premises were filed by CORE with the City Building Department of the City of Chicago, proper notice of said alleged violations having been served on plaintiff by mail.

8. That CORE, through its representatives have persisted in obtaining admission to the premises of various tenants of plaintiff, and often gained admissions by representing themselves as "building inspectors".

9. That the buildings in question are maintained in the best possible manner, with a maintenance personnel available during working hours to rectify any condition which requires attention.

10. That a registered letter was received by plaintiff on October 2, 1964, a photostatic copy of same attached hereto and marked as Exhibit I, which letter is directed to Mr. Sidney Smith, Building Commissioner of Chicago, from defendant, TAYLOR JONES,III, who represents himself as a Director of Core Freedom Center, in which the closing statement of this letter uses the following language "But if some action is not taken against Mr. Zaslavsky within one (1) week, we will be forced to take drastic measures to correct the situation ourselves" - signed Taylor Jones, III.

11. That the Building Department of the City of Chicago and the Circuit Court of Cook County has the authority to correct any complaint if properly presented, and there is no necessity to assume individual control of any situation of this nature by CORE, its representatives, or any organization other than a Branch of the Municipality of Chicago.

12. That plaintiff is in fear of bodily harm or violence as indicated by the persistent conduct of the defendants herein.

13. That the conduct of the defendants is such as to incite the persons who are tenants of the plaintiff, and that defendants act as agents of the tenants when in fact, they represent no tenant, but by their constant harrassment of said tenants induce them to complain about matters that in fact do not exist under the guise of "creating equality" if they complain enough".

WHEREFORE, plaintiff prays as follows:

That defendants, and each of them, be enjoined from entering the premises of buildings owned or managed by plaintiff;

That defendants, and each of them, be enjoined from attempted harrassment of plaintiff by persistently disturbing tenants of the plaintiff and inciting them to complain under the guise of improving their status in society;

That the defendants, and each of them, be enjoined from in any manner disturbing plaintiff, either by persistent demands for conference or by use of force or intimidation, or threats of force or intimidation by telephone;

That said Injunction issue without bond on the part of the plaintiff herein;

That said Injunction remain in full force and effect until such time as a full hearing may be had in the merits of this complaint;

That said Court enter an Order allowing plaintiff such other and additional or alternative relief, both temporary and permanent, as may appear to the Court to be equitable and just.

_____

Plaintiff

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

MORTON L. ZASLAVSKY, being first duly sworn on oath, deposes and states that the above and foregoing Complaint by him subscribed is true both in substance and in fact, except as to those matters stated to be on information and belief and as to those matters he believes them to be true.

_____

SUBSCRIBED and SWORN to before me this ____ day of October, A.D. 1964.

_____
Notary Public

RECEIVED
U.S. MARSHAL
1964 OCT -5 PM 4:17
N.DIST.OF ILL.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

MORTON L. ZASLAVSKY, Plaintiff	)	NO. 64C 1684
vs.	)	
CONGRESS OF RACIAL EQUALITY, TAYLOR JONES, III, and RICHARD BROWN, Defendants	)	

INJUNCTION WRIT

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

TO: Congress of Racial Equality - 38 Park Row, New York, N. Y.
Taylor Jones, III - 1486 N. Larrabee St., Chicago, Ill.
Richard Brown - 1486 N. Larrabee St., Chicago, Ill.

GREETINGS:

WHEREAS, at the October 1964 term of said Court, held at Chicago, in said District and Division, to-wit, on October 9 19 64, the Court entered its judgment in the above-entitled cause directing among other things that you and each of you be enjoined and restrained as prayed for in the Complaint filed in said cause against you.

NOW THIS IS TO COMMAND that you, your agents, employees, associates, servants and those in active concert and participation with you and each of you do absolutely desist and refrain from entering the premises of any building owned or managed by plaintiff, MORTON L. ZASLAVSKY, from inciting the tenants thereof to complain or do violence, or attempting to act as agent of the tenants, or any of them, with regard to any dealings said tenants may have with the plaintiff, MORTON L. ZASLAVSKY, or the Municipal Authorities of the City of Chicago, of molesting, harrassing or using any acts of violence against the plaintiff, MORTON L. ZASLAVSKY, his family or office associates, either in person, by telephone or by mail, or in any other manner interfering with the plaintiff's ownership, management or control of the subject premises.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

NORTON I. BASKOWSKY,

Plaintiff,

vs.

CONGRESS OF RACIAL EQUALITY, a/k/a CORE, ILL, and RICHARD BROWN,

Defendants.

No. 64C1684

INJUNCTION WRIT

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

TO: Congress of Racial Equality - 38 Park Row, New York, N. Y.
Tyler Tonbo, III - 1406 W. Lacrobee St., Chicago, Ill.
Richard Brown - 1406 W. Farragut St., Chicago, Ill.

GREETINGS:

WHEREAS, at the October A.D. 1964 term of said Court, held at Chicago, in said District and Division, to-wit, on October 9, A.D. 19 64, the Court entered its judgment in the above entitled cause directing among other things that you and each of you be enjoined and restrained as prayed for in the Complaint filed in said cause against you;

NOW, THIS IS TO COMMAND that you and each of you, your agents, servants, employees, and all persons in active concert and participation with you, or any of you, who shall receive notice of this writ by personal service or otherwise, are hereby enjoined and restrained from directly or indirectly, by yourselves or through others, in any manner whatsoever, in connection with the premises or any part thereof, or with regard to the plaintiff, or any of his property, or any property in which he has an interest, or any property which is in his possession or under his control, by telephone or by mail, or otherwise, or in any other manner whatsoever,

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MORTON L. ZASLAVSKY,

Plaintiff,

-v-

CONGRESS OF RACIAL EQUALITY, et al,

Defendants.

NO. 64 C 1684

M O T I O N

The defendant, CONGRESS OF RACIAL EQUALITY, by its Attorney, Joseph Keig, Sr., hereby moves this Court for an order granting leave to file a reply brief to plaintiff's brief in support of his Amended Complaint by agreement with the Attorney for Plaintiff.

Joseph Keig

Joseph Keig, Sr.
Attorney for Congress
of Racial Equality

RECEIVED a copy of the above and foregoing motion and copy of draft order this _____ day of November, 1964, before 4:00 P.M.

Edward Calihan
Attorney for Plaintiff
105 West Adams Street
Chicago 3, Ill.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MORTON L. ZASLAVSKY,

Plaintiff,

-v-

CONGRESS OF RACIAL EQUALITY, et al,

Defendants.

NO. 64 C 1684

O R D E R

WHEREAS, it appears to the Court that the attorney for the plaintiff and the attorney for the defendant have agreed to the filing of plaintiff's reply brief, IT IS HEREBY SO ORDERED.

ENTER:

_____
JUDGE

Edward Calihan
Attorney for Plaintiff
105 West Adams Street
Chicago 3, Illinois
DE 2-7374

_____

Joseph Keig, Sr.
Attorney for Defendant
Congress of Racial Equality, Inc.
613 Arlington Place
Chicago, Illinois
525-7556

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MORTON L. ZASLAVSKY, Plaintiff -v- CONGRESS OF RACIAL EQUALITY, et al. Defendants	NO. 64 C 1684

REPLY TO BRIEF OF PLAINTIFF FILED THE WEEK ENDING NOVEMBER 8, 1964 IN SUPPORT OF PLAINTIFF'S AMENDED COMPLAINT

IN RESPECT OF COUNT I

In respect of Count I, the Court has already ruled on this portion of the Amended Complaint. This Court held that where, as in the Amended Complaint, plaintiff bases his claim to jurisdiction on diversity of citizenship, and where examination of the Amended Complaint shows on its face that plaintiff is a citizen of Illinois and two of the defendants are citizens of Illinois, this Court has no jurisdiction of the case. That is the settled law of all federal courts.

The fact that the plaintiff can serve CORE under the Illinois Long Arm Statute is of no significance in the end, no matter how it gets service. There is still no diversity of citizenship, and so the Amended Complaint as to Count I certainly ought now be dismissed.

IN RESPECT OF COUNT II

We come now to the second count of the Amended Complaint. What we have said in respect of Count I above, applies equally to Count II: namely, plaintiff cannot add a new count to old Count I and by this technique breathe life into Count II when Count I has already been dismissed. This is true for two reasons. First, as we pointed out in our original brief, jurisdiction of the court is to be determined as of the date of the filing of the complaint; Second, there is even a more significant reason then we have given above. Mr. Calihan's ingenious thesis is that he may add to his Amended Complaint a new count based on U.S.C. Title 42, Section 1983 and since he is thus procedding under a federal statute he may rely on his Count II for jurisdiction of this Court. We doubt this, but we do not pause to argue the point. He has no jurisdiction under Count II because the federal law, according to the adjudicated cases, holds clearly that if the offenders are private persons, as they are here, the Complaint does not state a claim upon which relief may be granted.

Mr. Calihan cites cases which seemingly hold otherwise, but the settled law of this circuit as it is enunciated now recites Duzinsky vs. Nosal, 324 F 2d 924, where this circuit has ruled contrary to his contention. There it was said, p. 930:

> "Section 1983 has been held to apply solely and exclusively to action by state officers who use their authority, or misuse it, or purport to use their authority (although, in fact, acting outside their official function) to deprive a person of federally protected rights. Private persons,

although they may in fact deprive another person of federally protected rights are not liable under Section 1983."

See also Spampinato vs. Breger, 257 F 2d 46

Duzinsky has been held by this Court in dismissing complaints. DuSold vs. Washburn, 62 C 1835, Judge Perry, and Jemison vs. Olinger, 63 C 1558, Judge Will.

Of course, there are three Supreme Court cases on this subject which hold with defendant on this point, United States vs. Williams, 341 U. S. 70; Williams vs. United States, 341 U. S. 97; and Collins vs. Hardyman, 341 U. S. 651.

Joseph H. Keig, Sr.

CARL RACHLIN TRIP
CLEVELAND & CHICAGO
October 29-31, 1964

Thursday
October 29: Leave Kennedy Airport, United Flight 491, at 2:15 P.M. EST
Arrive Cleveland at 3:42 P.M. EST

Ruth Turner of Cleveland CORE and Attorney Graham will meet Mr. Rachlin at the airport.

At 7:00 P.M. there will be a meeting at the office of Attorney Fred D. Roseboro (Rachlin, Turner, Graham and Roseboro). Telephone: HE 1-4122.

Contact: Ruth Turner, Cleveland CORE: (216) 791-2111

Hotel: To be reserved by Ruth Turner.

Friday
October 30: Leave Cleveland on United Flight at 9:15 A.M. EST
Arrive Chicago at 9:32 A.M. CST

Gene Tournour will try to send someone to pick up Mr. Rachlin at the airport. Otherwise, proceed directly to Northside Freedom Center, 1486 North Larrabee. Telephone: 642-6719.

At 10-10:30 A.M. Gene Tournour will meet Mr. Rachlin and hold a preliminary meeting.

At 11:30 A.M. a meeting has been scheduled with Attorneys Keig and Byrner at their office: 30 North LaSalle Street, Telephone: (312)

After the above meeting Mr. Rachlin may meet with some of the tenants involved in this case, as well as with law students of Chicago University Law School who will be at the Northside Center in the early afternoon. These meetings should be ended by 4 P.M.

Contact: Gene Tournour, 204 West North Avenue: (312) 664-7083
OR at the Northside Center (see above).

Saturday
October 31: Leave Chicago for return to New York. Ticket is for tourist jet. There are flights on American Airlines almost hourly.

Sunday
Nov 1st: leave Newark ~~CANCELLED~~ 8:10 P.M. Delta 927.
~~Arrive Jackson 5:20 P.M. CST~~

Carl,
This realtor filed suit yesterday 10-5-64 to enjoin us from entering his buildings. Our hearing is 10-7-64

Hare

a national organization with affiliated local groups working

CONGRESS OF RACIAL EQUALITY
CORE

to abolish racial discrimination by direct, nonviolent methods

38 PARK ROW
NEW YORK 38, NEW YORK
COrtlandt 7-6270

James Farmer
national director
Richard Haley
associate
Gordon Carey
assistant
Carl Rachlin, Esq.
general counsel

ADVISORY COMMITTEE
Ralph Abernathy
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Roger N. Baldwin
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treasurer
James Peck
CORElator editor

STAFF
Norman Hill
program director
James McCain
director of organization
Marvin Rich
community relations director

September 28, 1964
CORE Freedom Center
1486 North Larrabee
Chicago, Illinois

OCT 7 1964

Mr Sidbey Smith
Building Commissioner
320 North Clark Street
Chicago, Illinois

Re: Mr. Martin Zaslovsky
Marin Darlan Realty Co.
820 W. North Avenue
Chicago, Illinois

Dear Sir:

We hereby lodge a formal complaint and request that affirmative, firmal action be taken against the above named relator for flagrant and numerous violations of the city building, health and fire codes.

Every attempt, humanly possible, has been made to communicate the coneern of the tenants and ourselves weith the condition of his buildings in which they live. Mr Zaslovsky has consistently refused to discuss our answer our complaints. Petitions and complaints signed by the tenants itemizing violations in each apartment has to date, brought forth no response or results. The buildings with which we are concerned are:

1. 1646 N. Bissell
2. 1648 N. Bissell
3. 1654 N. Bissell
4. 1658 N. Bissell
5. 1636 N. Hudson
6. 1625 N. Clybourn
7. 1635 N. Clybourn
8. 1705 N. Sheffield
9. 1721 N. Sheffield
10. 1723 N. Sheffield
11. 822 W. North Ave.
12. 1613 N. Dayton
13. 737 W. Blackhawk

Specific complaints have been filed with your office numerable times. The last complaint wes filed approximately five weeks ago. To date there has been no action taken by your office.

We cannot believe that the building codes and housing laws are so archaic or your office and staff so inefficient as to allow Mr. Zaslovsly to continually flout the law. The strategy of Mr. Zaslovsky is very obvious. He keeps his buildings on the fringe of complying with the codes. When a complaint results in court action he pays a nominal fine and continues to operate these most deplorable of slum buildings.

September 28, 1964

CORE and the tenants can no logger sit idly by and allow Mr. Zaslovely to continue exploiting tenants by charging exorbitant rents for substandard housing. He fails to provide even those services, such as enclosing exposed electrical wiring, that are a part of normal building maintainance.

We make this final appeal to your office or any other agency capable of rectifying this deplorable situation. We hope you will recognize the urgency and the need for immediate action. We believe that our elected public officials can and should take action on this matter, which is not only an act of crass exploitation, but is also a blight upon, and an insult to the city of Chicago and all of its citizens. But if some action is not taken against Mr. Zaslovsky within one (1) week we will be forced to take the drastic measures to correct the situation ourselves.

Respectfully,

Taylor Jones III
Director
CORE Freedom Center

Copies to:
Mayor Richard J. Daly
CORE National Office
Ill Dept. of Public Aid
(Regional Office - Housing Dept.)
Cook County Public Aid
Mr. Martin Zaslovsky
All News Media

30 North LaSalle Street, Room 303
Chicago 2, Illinois

October 16, 1964

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

OCT 19 1964

Dear Mr. Rachlin:

CORE's attorney of record (in this District Court case) Joseph Keig, Sr., who filed a special and limited appearance to test the court's jurisdiction, brings to CORE the talents of one of our generation's great legal minds, coupling forty years of experience with a youthful vigor lacking in most younger men.

Apparently the petitioner who until this morning had been proceeding in propria persona, attempted a desperation move and retained Miss Anne Lavin (the leading feminine member of District bar here) to save his "case." Also, rather clumsily we feel, the petitioner either unaware of or oblivious to Miss Lavin's high standard of integrity apparently expected to gain some sort of "favor" since Miss Lavin is Joseph Keig, Sr.'s personal attorney.

As we see it, however, the argument has been narrowed to the single question of jurisdiction and the determinative factor there would be the facts of diversity as alleged at the time of commencement of the suit. We feel we have ample decisional authority.

If you should care to correspond further, you may address Mr. Keig at 613 Arlington or 30 North LaSalle Street, Room 303, Chicago, Illinois.

(312) 525-7556

Very truly yours,

Paul Byrne

PAUL BYRNE

PB:vs

Enclosure

P.S. The local group seems to enjoy the support of some of the favorable local press. (See enclosed)

Rabb case file

October 23, 1964

Joseph Keig, Sr., Esq.
30 North LaSalle Street
Chicago 2, Illinois

Re: Zaslavsky v. CORE

Dear Mr. Keig,

I am most honored that you have agreed to appear on our behalf in the above case. We are certain that you will bring about a favorable result.

While I was in Washington the last several days, specifically on October 21, what purports to be a copy of the "injunction writ" was delivered by a U.S. Marshall to Val Coleman, a professional employee in the Community Relations Department. This may or may not be adequate service, but in any event, we certainly are on notice of the existence of the writ. Will it be necessary to file an answer in this matter? I would not like to be in default.

We have a substantial number of volunteer lawyers. If there is any point you wish examined and read, please let me know.

I look forward to the pleasure of meeting you soon.

Sincerely,

Carl Rachlin
General Counsel

cc: Paul Byrne, Esq.
Gene Townsend, 10/26
CR:bdl

Harvard
Illegible
address + tel no

JOSEPH KEIG, SR.
Attorney at Law
613 Arlington Place
Chicago, Illinois
525-7556

NOV 2 3 1964

November 20, 1964

Carl Rachlin, Esquire
General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Sir:

Enclosed is a very cryptic brief which I have written in the CORE case. I am also anxious to know what you people are going to do about the Mississippi situation of which I spoke to you when you were here last.

You better come out and see me because I have some brave ~~clients~~ plans based upon the case of Collins v. Hardyman.

Yours very truly,

Joseph Keig

JK:mr
Encl. 1

Zaslavsky

November 30, 1964

Joseph Keig, Sr., Esq.
613 Arlington Place
Chicago, Illinois

Dear Mr. Keig,

Thank you for your brief in Zaslavsky. It meets the point clearly and should win without difficulty.

By the way, two of our cases, one from Mississippi, the other from Louisiana, involved situations where Section 1983 was used against us; injunctions were granted in both cases, but we won on appeal and the Supreme Court denied certiorari in both. Clemmons v. CORE, 323 F2nd 54, 375 US 992; Douglas v. CORE, 318 F2d 95, cert. den. (haven't the US citation at the moment).

By the way, keep an eye open for a Fifth Circuit decision in Pierson et al. v. Ray. It was in that case we used your material from the Congressional Globe as an appendix.

I hope to come to Chicago soon. Regards to Paul.

Sincerely,

Carl Rachlin
General Counsel

CR:hdl

CORE

(Continued From Page 1)

not believe that the building codes and housing laws are so archaic . . . as to allow Mr. Zaslavsky to continually flout the law," Jones said in a letter to the commissioner.

"The strategy of Mr. Zaslavsky is obvious. He keeps his buildings barely on the fringe of complying with the codes. When a complaint results in court action, he pays a normal fine and continues to operate the most deplorable of slum buildings," he added.

Zaslavsky claims that he maintains his properties "in the best possible condition." At the same time he contends they are in no worse condition than any other apartments in the city. He even goes so far as to state that the tenants in his buildings are his friends, and he said none of the rents in his apartments ever go beyond $70 per month.

Jones, however, says he has proof that the rents in many cases, range from $90 to $125 per month, and added "this man, who refuses to make his tenants apartments even liveable, makes his home in a plush neighborhood way up north." Zaslavsky lives at 6240 N. Drake.

In a telephone conversation, a DEFENDER reporter asked Zaslavsky if he plans to seek an injunction against the CORE workers in the Municipal Court.

He replied, "I don't know just now. I'll let you know as soon as I decide one way or the other."

Jones later told the Defender, "Zaslavsky tried to get a hearing in the federal court because he has been in municipal court so often they probably would not even have issued the injunction. He's had his britches torn off there, so he had to find another court to go to."

No One Would Arrest Them

NEW YORK — (UPI) — Ten civil rights demonstrators had a problem here. No one would arrest them.

The 10—all members of the Congress of Racial Equality — had hoped to be sent to jail where they planned to go on a hunger strike.

They were so certain of arrest that CORE headquarters had prepared an advance press release saying "The American citizens arrested here have committed themselves to refuse bail and remain in jail where they are being held as political prisoners."

The demonstration began before noon when the 10 chained themselves to the columns in front of the U.S. Court House in lower Manhattan.

....More than six hours later they still were there, undisturbed by federal state or city law officers. Finally, they gave up and headed home.

The demonstrators were protesting what they called the failure of the federal government to use "existing power" to stop "killings, church bombings and beatings" in Mississippi.

Moves In For 'Kill' In Court

Chicago Defender 10/17/64

The Congress of Racial Equality having won one round in a battle against alleged "slum lord" Morton L. Zaslavsky, will press for the kill in a continuation of the fight in U. S. District Court.

CORE will take the near Northside realtor back to court in a move to get a complete dismissal of an injunction restraining the tenants from protests against poor housing conditions.

U. S. District Court Judge Michael L. Igoe, in an unusual move, indicated that he is reversing his own decision by throwing Zaslavsky's case against CORE defendants Taylor Jones III and Richard Brown out of court.

Zaslavsky, who manages Darlan Realty at 822 North Ave., charged that Jones and Brown, in the name of CORE, indicted tenants in his building to protest against building code violations. In the writ the realtor stated a fear that the tenants might seek to "accomplish their aims by force or violence."

Defending Atty. Joseph Keig proved that the federal court had no jurisdiction over the local case because Brown and Jones are residents of Illinois. He contended that Zaslavsky added the CORE organization, an out-of state agency, to the suit merely to be able to present in the Federal District Court.

Previous to the court action, CORE helped organize a tenant council in one of the buildings. As a result, the organization's office was swamped with calls from residents in the other 12 properties who wanted to form their own council and asked to be included in what CORE calls a selfhelp program.

Jones pointed out that the self-help idea is being used to encourage tenants to make minor repairs where needed, and hopefully stimulate some pride in keeping up the home surroundings.

Jones told the DEFENDER complaints against flagrant building code violations" had been sent innumerable times to Sidney Smith, building commissioner and that no action was ever taken.

"We have even sent pictures of exposed wiring, and falling plaster," Jones said. "We can-

See CORE, Page 2

MISCELLANEOUS CASES

Box 1
Folder 23

MSS SEDFRE
546

State Historical Society of Wisconsin

Please Retain Original Order

STATE OF SOUTH CAROLINA

IN THE RECORDER'S COURT

COUNTY OF YORK

The City of Rock Hill

-vs-

NOTICE OF INTENTION TO APPEAL AND EXCEPTIONS

Willie Thomas Massey
and Jacqueline Horry
Defendants

TO THE HONORABLE BILLY D. HAYES, JUDGE OF RECORDER'S COURT OF THE CITY OF ROCK HILL, SOUTH CAROLINA:

PLEASE TAKE NOTICE that the above named Defendants intend to and hereby do appeal to the Court of General Sessions for York County from the rulings, findings of guilty and sentence issued by the Court in the above-entitled case upon the following grounds to wit:

1.

The Court erred in overruling the Defendants motion to quash the warrant or in the alternative to dismiss the warrant made on the ground that the warrant is vague, uncertain and indefinite and does not constitute Breach of the Peace under the statutes and laws of the State of South Carolina, and does not sufficiently appraise these Defendants with the crime with which they are charged.

2.

The Court erred in overruling the Defendants motion to quash the warrant or in the alternative to dismiss the warrant made on the ground that the evidence shows that at the time of their arrest they were engaged in peaceful and orderly picketing upon the streets of the City of Rock Hill, South Carolina, in protest against certain practices, policies and customs of discrinination based upon race or color, the right to engage in such activity being protected to the Defendants under the guarantees of the 1st and 14th Amendments to the United States Constitution.

3.

The Court erred in overruling the Defendants motion to quash the warrant or in the alternative to dismiss the warrant made on the ground that the evidence shows that the arresting officers made the arrests for the purpose of preventing the Defendants from engaging in peaceful and orderly picketing upon the public streets of Rock Hill, South Carolina in protest against certain racial

discriminations, the motive of said officers being to maintain the policy, custom and practice of discrimination based solely upon race or color, such conduct on the part of the police officials, representatives of an instrumentality of the State, being prohibited by the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

4.

The Court erred in overruling the Defendants motion to quash the warrant or in the alternative to dismiss the warrant made on the ground that this Court lacks jurisdiction to try them under the circumstances surrounding the case, the evidence showing that these Defendants were arrested to prevent their orderly and peaceful picketing on the public streets of Rock Hill, South Carolina in protest against certain customs and practices of discrimination based upon race or color, the right to such activity being protected to them by the 1st and 14th Amendments to the United States Constitution; that this Court, by this trial, is being called upon to assist in the maintenance of the aforementioned custom aand practice of racial discrimination, and as an instrumentality of the State, this Court is forbidden to lend itself to assistance in any such scheme by the provisions of the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

5.

The Court erred in overruling the Defendants motion to quash the warrant or in the alternative to dismiss the warrant made on the ground that the City of Rock Hill failed to establish by competent evidence a prima facie case.

6.

The Court erred in overruling the Defendants motion to quash the warrant or in the alternative to dismiss the warrant made on the ground that the City of Rock Hill failed to establish by competent evidence the corpus delicti.

7.

The Court erred in overruling the Defendants motion for arrest of judgemnt or in the alternative, for a new trial made on the ground that the warrant is vague, uncertain and indefinite and does not constitute Breach of the Peace under the statutes and laws

of the State of South Carolina, and does not sufficiently appraise these Defendants with the crime with which they are charged.

8.

The Court erred in overruling the Defendants motion for arrest of judgment or in the alternative, for a new trial, made on the ground that the evidence shows that at the time of their arrest they were engaged in peaceful and orderly picketing upon the streets of the City of Rock Hill, South Carolina, in protest against certain practices, policies and customs of discrimination based upon race or color, the right to engage in such activity being protected to the Defendants under the guarantees of the 1st and 14th Amendments to the United States Constitution.

9.

The Court erred in overruling the Defendants motion for arrest of judgment or in the alternative, for a new trial, made on the ground that the evidence shows that the arresting officers made the arrests for the purpose of preventing the Defendants from engaging in peaceful and orderly picketing upon the public streets of Rock Hill, South Carolina in protest against certain racial discrimination, the motive of said officers being to maintain the policy, custom and practice of discrimination based solely upon race or color, such conduct on the part of the police officials, representatives of an instrumentality of the State, being prohibited by the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

10.

The Court erred in overruling the Defendants motion for arrest of judgment or in the alternative, for a new trial, made on the ground that this Court lacks jurisdiction to try them under the circumstances surrounding the case, the evidence showing that these Defendants were arrested to prevent their orderly and peaceful picketing on the public streets of Rock Hill, South Carolina in protest against certain customs and practices of discrimination based upon race or color, the right to such activity being protected to them by the 1st and 14th Amendments to the United States Constitution; that this Court, by this trial, is being called upon to assist in the maintenance of the aforementioned custom and practice of racial discrimination, and as an instrumentality of the

State, this Court is forbidden to lend itself to assistance in any such scheme by the provisions of the due process and equal protection clauses of the 14th Amendment to the United States Constitution.

11.

The Court erred in overruling the Defendants motion for arr arrest of judgment or in the alternative, for a new trial, made on the ground that the City of Rock Hill failed to establish by competent evidence a prima facie case.

12.

The Court erred in overruling the Defendants motion for arrest of judgment or in the alternative, for a new trial, made on the ground that the City of Rock Hill failed to establish by competent evidence the corpus delicti.

March 17, 1961

Ernest A. Finney, Jr.
Attorney for Defendants

Due and legal service of the foregoing Notice of Intention to Appeal and Exceptions is acknowledged this ___ day of March, 1961.

Hon. Billy D. Hayes, Judge
Recorder's Court of Rock Hill

STATE OF SOUTH CAROLINA

IN THE RECORDER'S COURT

COUNTY OF YORK

The City of Rock Hill

-vs-

STIPULATION

Willie Thomas Massey
and Jacqueline Horry
Defendants

It is stipulated and agreed between C.W.F. Spencer, City Attorney for the City of Rock Hill and Ernest A. Finney, Jr., Attorney for the Defendant above named and for the Defendant h hereinafter named that the within Notice of Intention to Appeal and Exceptions shall serve as Notion of Intention to Appeal and Exceptions in the following case:

The City of Rock Hill -vs- Jacqueline Horry

This stipulation was entered into in open Court before the Honorabel Judge B.D. Hayes, Judge of Recorder's Court of the City of Rock Hill, South Carolina

I consent to this stipulation. _____
Attorney for the Defendants

I consent to this stipulation. _____
Attorney for the City of Rock Hill

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF GENERAL SESSIONS

The City of Rock Hill

vs.

ORDER

Charles Edward Taylor, et al.(10 cases);
Dianne Judith Nash, et al. (4 cases);
Willie Thomas Massey, et al. (2 cases);
and Robert L. McCullough, et al. (5 cases);

This Court has before it for consideration a total of 21 cases, as above entitled, which were heared by the Recorder's Court for the City of Rock Hill. The convictions of all defendants were in due time appeal to this Court and heard together by this Court on agreed Transcripts of Record. By occurrence and charge the cases are grouped as follows:

1. Ten trespass charges within McCrory's Variety Store, against Charles Edward Taylor, et al. on January 31, 1961, (after enactment of the 1960 Trespass Act). Appeal bond was posted by Charles Edward Taylor. The other 9 defendants in this group gave timely notice of intention to appeal, but posted no appeal bond and their sentences of confinement were fully performed and discharged.

2. Four trespass charges, within Good Drug Store, against Dianne Judith Nash, et al. on February 6, 1961. The four defendants gave timely notice of intention to appeal, but posted no appeal bond and their sentences of confinement were fully performed and discharged.

3. Two breach of peace charges upon the public streets at Tollison - Neal Drug Store against Willie Thomas Massey, et al, on March 14, 1961. Appeals were duly taken and proper bonds were posted.

4. Five trespass charges within Tollison - Neal Drug Store, against Robert L. McCullough, et al, on December 21, 1961.

Appeals were duly taken and proper bonds were posted.

On December 29, 1961 this Court handed down an Order Affirming Convictions in the cases of the City of Rock Hill vs. Leroy Henry, et al, involving a total of 68 breach of peace charges and 3 trespass charges. With one exception hereafter mentioned, this Court finds no real distinction between the cases previously ruled upon and those now before this Court for consideration. Here we have two breach of peace cases and 19 trespass cases for consideration.

In the breach of peace cases, it appears from the record that the public peace was endangered, that the defendants were properly forewarned by a police officer to cease and desist from further demonstrations at that time and place, and move on, which they failed and refused to do, despite allowance of ample time within which to have complied with the order, and that thereafter they were arrested and charged with breach of peace as continuance of their activities under the circumstances then existing, as shown by the record, constituted open defiance of proper and reasonable orders of a police officer and tended with sufficient directness to breach the public peace.

The offense charged in the two breach of peace cases is clearly made out under the facts shown by the Transcript of Record and the law of force in this state, particularly as the law is shown by the recent decision of the South Carolina Supreme Court in the case of State vs. Edwards, et al, Opinion No. 17853, filed December 5, 1961.

In all of the 18 trespass cases each defendant was asked to leave the premises by the Manager of the store, this occured in the presence of a City police officer, who then himself requested each defandant to leave and explained that arrest would follow upon failure to leave. After each defendant failed

to leave the private premises involved, following allowance of a reasonable opportunity after request so to do, first by the Manager and then by the police officer, such defendant was arrested and charged with trespass. Here again, under the facts disclosed in the record and the law of force in this state, the charge of trespass is properly made out as to each defendant. See City of Greenville vs. Peterson, et al, S. C. Supreme Court opinion No. 17845, filed November 10, 1961, and city of Charleston v. Mitchell, et al S. C. Supreme Court Opinion No. 17856, filed December 13, 1961.

A number of specific legal questions were raised by the defendants, including particularly a question as to adequacy and sufficiency of the warrants and whether or not the defandants were properly advised of the charge s pendin a gainst them. An examination of the warrants discloses that in each case the facts constituting the offense charged were stated with reasonable and sufficient particularity. It is the opinion of this Court that the various legal objections raised in the Court below, which are not set forth in detail herein, were properly overruled, See State vs. Randolph, et al, 239 S. C. 79, 121 S.E.2d 349, filed August 23, 1961, other authorities cited herein, and other applicable decisions of our Courts referred to in the cited authorities.

There remains one other point for consideration involving the 9 codefendants of Charles Edward Taylor, and also Dianne Judith Nash and her 3 codefendants, all charged with trespass. The defendant Charles Edward Taylor gave timely notice of intention to appeal and posted proper appeal bond. The other 13 defendants just mentioned gave timely notice of intention to appeal but failed and refused to post appeal bond as required by law and the sentences of confinement imposed upon

each of the said 13 defendants were forthwith fully performed and discharged. After the appeals were noticed and before hearing thereof, Respondent's counsel gave notice of motion for dismissal of the appeals in question upon grounds of failure to perfect the appeals in accordance with the procedure prescribed by law through posting of appeal bonds pursuant to Section 15-1017, Code of Laws of South Carolina for 1952, and upon the further grounds that voluntary submission to and discharge of the sentence rendered the questions under appeal moot and academic. In argument of these cases before this Court Appellants' counsel took the position that the designated defendants were entitled to perfect their appeal despite their failure to post appeal bond in order to clear their names of the convictions standing on record against them. The question is discussed in 2 Am. Jur. 988, Appeal and Error, Section 232, which points out that some Courts take the position asserted by Respondent, while others take the position asserted by Appella nts. Reference is made to annotations appearing in 18 A.L.R. 867, and 74 A.L.R. 638. Appellant' position follows the minority ruled discussed in the annotation, while Respondent's position is in accordance with the majority view followed by the United States Supreme Court and numerous other State Courts, as noted in the annotation. Furthermore, the point has been directly ruled upon, adversely to the position of Appellants, in State vs. Good 214 S. C. 481, 53 S. E. 2d 225, and in town of Batesburg vs. Mitchell 58 S. C. 564, 37 S. E. 36. In the latter case the Court said: "There can be no doubt that an appellate tribunal cannot, and will not, do such a nugatory act as to hear an appeal from a sentence which has already been complied with; for that would be to decide a mere speculative question; and this, it has been frequently held, the Court

will not do".

NOW THEREFORE,

IT IS ORDERED, ADJUDGED AND DECREED:

1. That the convictions by the Recorder's Court of the City of Rock Hill in the 8 cases in which appeals were properly and duly perfected; namely, those of the defendants Charles Edward Taylor, Willie Thomas Massey, Jacqueline Horry, Robert L. McCullough, Ezelle A. Long, Mack C. Workman, John A. Gaines and Clarence A. Graham are hereby affirmed and each of the cases is remanded for execution of sentence as originally imposed.

2. That the appeals of the 13 defendants whose sentences have been discharged; namely, James F. Wells, Clarence M. Graham, Robert L. McCullough, Thomas Gaither, Willie McCleod, Mack C. Workman, John A. Gaines, Willie Massey, David Williamson, Dianne Judith Nash, Ruby Doris Smith, Joseph Charles Jones and Charles Melvin Sherrod are hereby dismissed. It is the view of this Court that it has no right or jurisdiction to hear said appeals in which bonds were not posted and the sentences have heretofore been complied with. This Court deems it appropriate to add that the convictions in said cases would have been affirmed in like manner as the other cases under appeal should this Court have had jurisdiction to consider same.

ALL OF WHICH IS SO ORDERED.

Chester, S. C.
April 23, 1962

/s/ George T. Gregory, Jr.
Residing Judge Sixth Judicial Circuit

STATE OF WISCONSIN :: CIRCUIT COURT :: MILWAUKEE COUNTY

JOHNNIE RUTH CARSON,

Plaintiff

-vs-

PHILIP PAPE, DONALD BROCKMAN, GORDON WALLER, RICHARD KRAMER and ROBERT BOBIEN

Defendants

PLAINTIFF'S REQUESTED INSTRUCTIONS TO JURY

Case No. 277-918

Now comes the plaintiff and respectfully requests that the following instructions be given to the jury:

I AS TO FALSE IMPRISONMENT

You are instructed that to support a verdict showing false imprisonment, the burden of proof is on the plaintiff in this case to establish the following two (2) elements by the greater weight of the evidence:

1. The detention or restraint of the plaintiff herein against his will by the defendants; and

2. The unlawfullness of such detention or restraint.

It is not necessary that the wrongful action which results in detention or restraint be under color of any legal or judicial proceeding; nor do lack of malice, the presence of good faith, or the presence of probable cause for the imprisonment effect the existance of the wrong, where the detention is unlawful. There need be no actual force, threats, or injury done to the individual's person, character, or reputation; 22 Am Jur. Page 397, Sec. 4.

All that is necessary to make out a charge of false imprisonment is that the individual be restrained of his liberty without any sufficient legal cause therefor, and by words or acts which he fears to disregard. Adair v. Williams 24 Ariz. 422,26 A.L.R. 278. As to the meaning of the word "unlawfull", you are instructed that an arrest without a warrant is lawful only in case it is made under circumstances authorized by Statute.

II AS TO DAMAGES

If your verdict requires you to set an amount for damages to which the plaintiff is entitled, you are instructed that in arriving at the amount of such damages you should consider and include the following:

1. Such expense the plaintiff is put to for attorneys services in securing his release from arrest.

2. Reasonable compensation for any physical injury done to plaintiff by defendants in making the arrest and detention.

3. Reasonable compensation for loss of time, and all such suffering from sense of insult, anxiety, and indignity and other injuries to feelings, if any, as the evidence shows to a reasonable certainty was the natural result of the arrest and imprisonment in question.

The sum of these elements of damage will be your assessment returned by your verdict.

You should include nothing else, and particularly you should not include any sum or increase of damages because of any feeling of sympathy for the plaintiff, or any feeling of resentment, or any desire to punish any of the defendants, nor should anything be omitted because of sympathy for the defendants or any of them.

Attorneys fees in securing his release from arrest are to be considered by you in the amount of damages and should be included. Mc Donald v. Clawson Circuit Court Oneida County, Wisconsin.

III AS TO PUNITIVE DAMAGES

You are instructed that if you find that the plaintiff was placed under arrest or imprisonment and that such arrest or imprisonment was effected recklessly, oppressively, insultingly, or wilfully and maliciously, with a design to oppress and injure, then you may set and assess as a punishment to the defendants such additional damages as in your discretion you may deem proper. 22 Am. Jur. Sec. 132; Fleisher v. Ensminger, 140 Md. 604, 118 Att. 153.

In regard to the foregoing, the word "malice" does not necessarily mean anger or a malevolent or vindictive feeling toward the plaintiff; but a wrongful act without reasonable excuse is malicious within the legal meaning of the term; 22 Am. Jur. Sec. 132.

IV AS TO REASONABLENESS OF THE ARREST AND IMPRISONMENT

It is the law in this state that no one, a peace officer or otherwise, has a right to arrest or restrain of his liberty a person charged with or suspected of a misdemeanor unless committed in the presence of such arresting officer, without a duly executed warrant regularly issued upon an affidavit sworn to before the proper authority.

And if you find from the evidence in this case that the defendants or either of them did arrest or restrain the plaintiff against his will and wish as described in the complaint

and without a warrant for his arrest, then and in that event he or they are properly chargeable with any damages which plaintiff sustained as a proximate result of such unlawful arrest or restraint, and your verdict should be for plaintiff accordingly. Preston v. Curry, Circuit Court, Marion County, Indiana, No. 36585, Instructions, 1922-24, p. 454.

V AS TO JOINT AND SEVERAL LIABILITY OF DEFENDANTS

If an officer falsely arrests a person, and starts with him to the station house, every officer or other person who joins with him in the tort at successive intervals and places on the way and the officer in charge at the station house, who receives the arrested person from them and locks him up, are all participants in the same tort, if liable for tort at all, which liability has to be determined on the evidence at the trial in respect of each. Annotation: 14 L.R.A. (N.S.) 1122.

Respectfully Submitted

EISENBERG & KLETZKE

Attorneys for Plaintiff

O.P.) ; 24

SEP 12 1962

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse, Pearl and Centre Streets, in the Borough of Manhattan, City and State of New York, on the 5th day of September, 1962.

P R E S E N T :

HON. GEORGE TILZER

Justice.

In the Matter of the Application of the PEOPLE OF THE STATE OF NEW YORK,	:	
Petitioner,	:	Index No. 41159-1962
For an order pursuant to Section 63, subdivision 12, of the Executive Law to enjoin OFFICE TEMPORARIES, INC., a New York corporation, and NATHAN W. PICKER, individually and as president thereof,	:	
Respondents,	:	
From conduct in violation of the Law Against Discrimination.	:	

Upon reading and filing the petition herein verified the 9th day of August, 1962, the affidavit by Shirley Adelson Siegel in support of said petition verified the 9th day of August, 1962, and upon the consent by the respondents acknowledged the 9th day of August, 1962,

NOW, on motion by Honorable LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for the petitioner herein (Shirley Adelson Siegel, Assistant Attorney General in charge of the Civil Rights Bureau, of counsel), it is hereby

ORDERED, that the respondents and their agents, servants and/or employees be and they hereby are perpetually enjoined, restrained and prohibited from discriminating on the basis of race, creed, color or national origin in the conditions of

employment of the office help supplied by them to outside firms; from making any inquiries, direct or indirect, oral or written, concerning preferences, if any, of such outside firms for office help on the basis of race, creed, color or national origin; and from maintaining any records either as to any such preferences or as to the race, creed, color or national origin of any employee; and it is further

ORDERED, that the respondents and their agents, servants and/or employees do the following:

1. By October 15, 1962, (a) replace all active customer account cards containing any reference whatever to race, color, creed or national origin with cards omitting any such reference; (b) prepare a new form of personnel registration card containing no space for identification by race, creed, color or national origin, and no inquiry as to physical characteristics not serving a lawful business purpose; (c) replace all active personnel cards with cards omitting any such identification and/or inquiry, and employ as to future applicants only the new cards; and (d) upon the replacement of customer account cards and personnel cards, destroy for all purposes the cards and forms of cards which are replaced.

2. Not solicit, accept, record, nor honor any specification by a customer limiting the selection of temporary office help on the basis of race, creed, color or national origin.

3. Not identify temporary office employees on the basis of race, creed, color or national origin, either overtly or covertly, by any method whatever, direct or indirect, it being understood that under all the circumstances, the lawful business purposes of Office Temporaries, Inc. are best served by not having any record of such identifying information.

4. Not discriminate against any applicant for employment nor against any employee on the basis of race, creed, color or national origin.

5. Instruct all supervisory, interviewing and dispatching personnel in regard to all of the foregoing, and maintain on display at all the offices of the corporation within the State of New York the poster of the State Commission for Human Rights; and it is further

ORDERED, that respondents pay Two Thousand ($2,000.00) Dollars to the petitioner as and for costs; and it is further

ORDERED, that the petitioner may make such further application under the provisions hereof, including but not limited to application to punish for contempt, as it may deem necessary and proper for the enforcement hereof.

E N T E R

G.T.
J.S.C.

Filed
Sept. 5, 1962
N.Y. County Clerk's Office

I hereby consent to the entry of the foregoing Order.

(sgd.) Sherman & Adler
SHERMAN & ADLER, ESQS.
Attorneys for Respondents

Dated: New York, New York
September 4, 1962.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

Application of the PEOPLE OF THE STATE OF NEW YORK, Petitioner, for an order pursuant to section 63, subdivision 12, of the executive law to enjoin OFFICE TEMPORARIES, INC., a New York corporation and NATHAN W. PICKER, individually and as president thereof, Respondents, from conduct in violation of the law against discrimination.

PETITION

----------X

The People of the State of New York by Honorable Louis J. Lefkowitz, Attorney General of the State of New York, respectfully alleges as follows:

1. Office Temporaries, Inc. is a New York corporation having its principal office at 39 Cortland Street and branch offices situated at 55 West 42nd Street, 415 Lexington Avenue and 45 West 34th Street, all in New York City.

2. Nathan W. Picker is a director and officer, to wit, the president, of Office Temporaries, Inc.

3. Upon information and belief: Office Temporaries, Inc., at all times hereinafter mentioned, was and still is engaged in the business of furnishing temporary office help to outside firms, its clients, and has maintained and maintains an active file of the names of approximately 7000 persons who are on call for assignment as such temporary office help.

4. In 1961 in the course of a proceeding on a complaint by one Barbara Hancock, the New York State Commission for Human Rights found that Office Temporaries, Inc. marked its files on temporary office help with notations as to the individual's race or color, and ordered it to desist, and Office Temporaries, Inc.

further did, at the behest of the said Commission, obliterate such notations on existing personnel cards by blacking them out.

5. At all times herein mentioned Office Temporaries, Inc. did, and it still does, maintain a system or procedure for determining which individuals in its pool of temporary office help are Negro.

6. Office Temporaries, Inc. solicits and accepts orders from clients on the basis of specifications as to race, color, creed or national origin.

7. Office Temporaries, Inc. fills orders for temporary office help with due regard to the client's specifications as to race, color, creed or national origin.

8. Nathan W. Picker has knowingly maintained the foregoing policy of assigning temporary office help on the basis of specifications as to race, color, creed or national origin, and has instructed the employees and agents of respondent Office Temporaries, Inc. to pursue such policy.

9. By reason of the foregoing, persons of race, creed, color or national origin not specified as acceptable have been and are denied equality in the conditions of employment in violation of executive law, section 296, subdivision 1 (a) (being part of the law against discrimination).

10. Office Temporaries, Inc. has been aiding certain of its clients to discriminate in employment on the basis of race, creed, color or national origin, in violation of the executive law, section 296, subdivision 6.

11. Office Temporaries, Inc. has been making inquiries which express a limitation, specification and discrimination as to race, creed, color or national origin, not based on a bona fide

occupational qualification, and violative of the executive law, section 296, subdivision 1 (c).

12. Respondents have at all times herein mentioned persistently and repeatedly engaged in the aforesaid illegal conduct.

13. No previous application has been made for the relief herein requested.

WHEREFORE, your petitioner prays that an injunction be issued pursuant to executive law, section 63, subdivision 12, enjoining and restraining Office Temporaries, Inc., its employees and agents, and Nathan W. Picker from discriminating on the basis of race, color, creed or national origin in the conditions of employment of personnel assigned as temporary office help, and for such other and further relief as may be just and proper.

Dated: New York, New York
August 9, 1962

THE PEOPLE OF THE STATE OF
NEW YORK
By
LOUIS J. LEFKOWITZ
Attorney General of the
State of New York

SHIRLEY ADELSON SIEGEL, being duly sworn says:

That she is an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York; that she has read the foregoing petition and knows the contents thereof, that the same is true to her own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

That the reason this verification is made by your deponent and not by the People of the State of New York is that the People of the State of New York are a body politic and sovereign acting through their officials and agents. That the sources of your deponent's knowledge and the grounds of her belief are investigations caused to be made by the Department of Law of the State of New York and documents and records made available to it.

/s/ SHIRLEY ADELSON SIEGEL

Sworn to before me this
9th day of August, 1962.

/s/ MARION S. SINER
Assistant Attorney General
of the State of New York

MARION S. SINER
ASSISTANT ATTORNEY GENERAL
STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

Application of the PEOPLE OF THE STATE OF NEW YORK, Petitioner, for an order pursuant to section 63, subdivision 12, of the executive law to enjoin OFFICE TEMPORARIES, INC., a New York corporation, and NATHAN W. PICKER, individually and as president thereof, Respondents, from conduct in violation of the law against discrimination. : AFFIDAVIT

----------X

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

SHIRLEY ADELSON SIEGEL, being duly sworn, deposes and says:

I am Assistant Attorney General of the State of New York in charge of the Civil Rights Bureau, and I make the following affidavit in support of the application by Honorable Louis J. Lefkowitz, Attorney General of the State of New York, in behalf of the People of the State of New York for an order pursuant to section 63, subdivision 12, of the executive law to enjoin and restrain Office Temporaries, Inc. from certain business practices in violation of the law against discrimination.

Business of Office Temporaries, Inc.

Office Temporaries, Inc., a New York corporation, is in the business of furnishing temporary office help. It is a pioneer in this industry, having been incorporated on October 9, 1950, and claims to be the largest concern supplying office help in the eastern part of the United States. It does a gross business of about $5,000,000 a year, and has approximately 7000 employees on call, of whom no less than 1000 are Negro.

Annexed as Exhibit "A" is a printed flyer used by Office Temporaries, Inc. in promoting the business of supplying temporary

office help to substitute for regular help on vacation. Annexed as Exhibit "B" is the form of letter sent by Office Temporaries, Inc. to a client upon filling his order, which describes succinctly the function that is performed by this organization:

> "Our service is designed to free you of annoying details and major fringe costs such as payroll preparations, Unemployment and Disability Insurance, Social Security, etc. In addition we bond our employees for $100,000 each and provide Workmen's Compensation."

Office Temporaries, Inc. has branches throughout the New York metropolitan area. Its main office is at 39 Cortland Street in the heart of the financial district, from which it draws its most important group of clients.

The president and principal stockholder of Office Temporaries, Inc. is Nathan W. Picker, who is personally responsible for the active management of its affairs.

Basis of Application

Following a lead furnished by a member of the public which indicated possible wrongdoing by Office Temporaries, Inc., the Civil Rights Bureau subpoenaed its records, which are maintained at its two dispatching offices---55 West 42nd Street and 39 Cortland Street, both in New York City. An inspection of these records, supplemented by interrogation of certain officers and employees, abundantly established violation of the law against discrimination.

The Bureau found that employees of Office Temporaries, Inc. in taking orders for temporary office help have made it a practice to find out if the client wishes such help to be screened on the basis of race, color, creed or national origin.

Documents inspected by the Bureau support this finding. Typical comments appearing on the customer's permanent account cards, which are made up from the order forms, are as follows:

"NFU OK at all times. Do Not
 Ask Unnecessary."

The designation "NFU" or "N.F.U." is short for "Negroes," having developed as an abbreviation of "not for us." This code has been continuously in use at Office Temporaries, Inc. since the corporation was organized in 1950.

Other indications that Office Temporaries, Inc. has solicited specifications as to race are as follows:

"NFU OK"

"FIRM MAY BE ANTI BIAS WATCH!"

"MISS _____ AT THIS ACCT IS NFU
DO NOT ASK IF THEY WILL ACCEPT NFU."

For the customers who specify that the do not want colored help, the usual indication on the employer's account card is "NO NFU" or "NO NFU'S." The Civil Rights Bureau inspected over forty cards marked in this way. Other cards in this category were marked "NFU SECTION"; "NO NFU'S. EXEC'S ARE MAINLY FROM LOUISIANA." Or, per contra, "WANTS NFU."

Some firms specify they do not want Jewish help. The card notation then reads: "Only Gentiles" or, "PREFER NON-JEWISH GIRLS" or, Wants Christian girls." The double restriction to white gentiles also appears:

"Wants Gentile Girls Only. White Girls Only."

Other minority groups are also affected by this practice:

"NO ORIENTALS"

Conversely, a firm may indicate that colored help are preferred, and this specification is likewise observed. Typical remarks on such a customer's account card are:

"Wants NFU" or,

"NFU section"

A corollary practice to the acceptance of discriminatory orders is a practice of indicating the race or color of each temporary employee. The "secret" code in use at Office Temporaries, Inc. in recent months has been buried in the interviewer's remarks on the employee's application. This code is not disclosed here, as it will be helpful to enforcement of the law not to make it public at this time.

Some personnel registration cards inspected by the Civil Rights Bureau also carried the designation "NFU" opposite the name.

A further betrayal that the employee is a Negro results from a commitment made to the State Commission for Human Rights in January 1961 to obliterate any reference to color; where a word has been blocked out, the inference is inescapable that the word blocked out was "Negro." "These we knew were Negro people because of the change we made and you can visually see this." (Interrogation of Alfred Satt, July 16, 1962)

Previous Violations

The illegality of the conduct by Office Temporaries, Inc. uncovered in the recent investigation by the Civil Rights Bureau is compounded by the fact that this corporation as recently as last year was directed by the State Commission for Human Rights to comply with the law, and specifically, to discontinue its practice of designating race on the registration cards of Negro applicants. Investigation had shown that the personnel cards contained such notations as "Negro---very even skin and not very dark."

Request for Permanent Injunction

The investigation of Office Temporaries, Inc. conducted by the Civil Rights Bureau in recent weeks uncovered a serious disregard of the law against discrimination, which has been the law of the land in this jurisdiction for seventeen years.

The investigation showed callous disrespect for the law against discrimination not only by a large organization supplying temporary office help in the State, but also, by its substantial clients. The names of close to 60 concerns are now on the Attorney General's list---a list of the Civil Rights Bureau for immediate investigation and the probable filing of a complaint against each one with the State Commission for Human Rights. Until the investigation has been concluded, the Attorney General is not divulging any names. It will in time appear, however, that one-third of the companies are well-known to the public.

Office Temporaries, Inc. has flaunted the law against discrimination and the authority of the State Commission for Human Rights. It has shown itself to be a persistent, deliberate offender who should be subject to the direct power of the court to punish for contempt in the event of any future violation. The educational purpose of the law against discrimination will be best served in this case by a swift injunctive order in the courts.

As the annexed consent shows, Office Temporaries, Inc. and Nathan W. Picker, individually and as president, have admitted all of the facts contained in the foregoing affidavit and are consenting to the entry of an order by the Supreme Court in the form proposed by the Attorney General.

/s/ SHIRLEY ADELSON SIEGEL

Sworn to before me this
9th day of August, 1962.

/s/ MARION S. SINER
MARION S. SINER
ASSISTANT ATTORNEY GENERAL
STATE OF NEW YORK

GOING TO THE MOUNTAINS
FOR THE SUMMER?

RELAX
WITH HELP FROM
OFFICE TEMPORARIES
INCORPORATED

LARGEST
POOL
OF TEMPORARY OFFICE
HELP AVAILABLE
EXPERIENCED
SCREENED RELIABLE
PERSONABLE

REGULAR EMPLOYEES
GOING ON VACATION?

Don't lose out on that important business deal because of your office vacation schedule. When regular employees go off for their well-earned rest, keep your office going at peak efficiency with temporary replacements from O.T.I.

DON'T DEPEND ON USUAL
SUMMER REPLACEMENTS

Do you, like so many others, find that the summer replacements you have hired think more of their own vacations than their work? Are you paying for hours or days not worked by day-dreaming or "sunstruck" substitutes? Just remember, then, that O.T.I. temporary replacements are carefully screened for reliable responsibility in addition to ability. Also keep in mind that with help from O.T.I. you pay only for actual hours worked.

YOUR PROBLEMS MELT AWAY
WHEN YOU CALL

OFFICE TEMPORARIES
INCORPORATED

DO YOU NEED . . .

CLERKS

Filing, Sorting, etc.
Light Posting, Adding Machine
Skilled Adding Machine
Figure Work, Clerk-typist
Mimeograph Operator

TYPISTS

Manual or Electric
Special, Executive Model, Ditto,
Multilith and Manuscript
Dictaphone Oper. (transcription)
Statistical Typist

BOOKKEEPERS

Assistant, Full Charge

No bothersome payroll and bookkeeping records

No deductions for Workmen's Compensation, Etc.

No deductions for Unemployment Insurance

You don't pay Social Security

You don't waste time interviewing & screening applicants

You pay only one weekly bill to O.T.I.

Keep O.T.I. help only as long as you need it--from a day to several months

You don't pay Withholding Tax

ALL EMPLOYEES GUARANTEED--FULLY BONDED

SEE REVERSE SIDE FOR AVAILABLE CATEGORIES OF OFFICE HELP . . .

SECRETARIES & STENOS

Commercial Stenographer
Technical, Medical or
Engineering Secretary
Legal Stenographer
Executive Secretary

OFFICE MACHINE OPERATORS

Monitor Board
One Position PBX
Multiple Position PBX
Addressograph and/or
Graphotype, Bookkeeping
Machine, Calculating Machine
Teletype Operator
Comptometer or Burroughs
Calc. Key Punch, Proof or
Tab Machine Oper.

Exhibit "A"

CALL . . .

WHITE PLAINS WH 6-1555	NEW YORK WO 4-0100	POUGHKEEPSIE GR 1-4130
NORWALK TE 8-2371	BRIDGEPORT FO 8-1633	STAMFORD DA 5-1336
NEWARK MI 2-2370	DANBURY PI 3-9916	RIDGEWOOD GI 4-2399

DON'T DELAY . . . PHONE YOUR LOCAL O.T.I. OFFICE TODAY

OFFICE TEMPORARIES
INCORPORATED

[Copy of text]
Exhibit "A"

OFFICE TEMPORARIES INCORPORATED

39 Cortlandt Street
New York 7, N.Y.

Worth 4-0100

Executive Offices

_____
Category

_____
Rate

Branches:

New York

35 W. 42nd St.

45 W. 34th St.

415 Lexington Ave.

Bronx

Brooklyn

Staten Island

Long Island City

Forest Hills

Mineola

Rockeville Centre

Hicksville

Huntington

White Plains

Poughkeepsie

New Jersey

Newark

Ridgewood

Connecticut

Stamford

Norwalk

Bridgeport

New Haven

Danbury

Pennsylvania

Philadelphia

Gentlemen:

Thank you for your order. As a valued client you will want to know that your complete satisfaction is our main job.

The temporary help sent to your office has been chosen with infinite care by the largest concern of its kind in the East, and a pioneer in the field. You will see this clearly as your "workload" disappears. So sure are we that you will be satisfied that we "GUARANTEE" our Service. If you are not satisfied with the performance of our employee--let us know promptly and there will be no charge for the first day's work.

Our service is designed to free you of annoying details and major fringe costs such as payroll preparations, Unemployment and Disability Insurance, Social Security, etc. In addition we bond our employees for $100,000 each and provide Workmen's Compensation.

Our one weekly invoice, at the rate quoted above, covers everything.

We're happy to serve...and are looking forward to a warm and pleasant continuing association. Thanks for the opportunity.

Sincerely,

(sgd.) Nathan W. Picker

N. W. Picker
President

EXHIBIT "B"

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Application of the PEOPLE OF THE STATE OF NEW YORK, Petitioner, for an order pursuant to section 63, subdivision 12, of the executive law to enjoin OFFICE TEMPORARIES, INC., a New York corporation, and NATHAN W. PICKER, individually and as president thereof, Respondents, from conduct in violation of the Law Against Discrimination.	CONSENT

I, NATHAN W. PICKER, hereby acknowledge service upon me individually and as president of Office Temporaries, Inc. of a copy of the foregoing proposed order for a permanent injunction and of the petition and affidavit thereto annexed.

I have read each of said papers and understand the contents thereof. I admit to be true all of the statements contained in the said affidavit.

I hereby consent in behalf of myself individually and of Office Temporaries, Inc. to the entry of the foregoing order without further notice.

I further consent in behalf of myself individually and of Office Temporaries, Inc. to the following:

1. By October 15, 1962, (a) to replace all active customer account cards containing any reference whatever to race, color, creed or national origin with cards omitting any such reference; (b) to prepare a new form of personnel registration card containing no space for identification by race, creed, color or national origin, and no inquiry as to physical characteristics not serving a lawful business purpose; (c) to replace all active personnel cards with cards omitting any such identification and/or inquiry, and to employ as to future applicants only the new cards; and

(d) upon the replacement of customer account cards and personnel cards, to destroy for all purposes the cards and forms of cards which are replaced.

2. Not to solicit, accept, record, nor honor any specification by a customer limiting the selection of temporary office help on the basis of race, creed, color or national origin.

3. Not to identify temporary office employees on the basis of race, creed, color or national origin, either overtly or covertly, by any method whatever, direct or indirect, it being understood that under all the circumstances, the lawful business purposes of Office Temporaries, Inc. are best served by not having any recorf of such identifying information.

4. Not to discriminate against any applicant for employment nor against any employee on the basis of race, creed, color or national origin.

5. To instruct all supervisory, interviewing and dispatching personnel in regard to all of the foregoing, and to maintain on display at all the offices of the corporation within the State of New York the poster of the State Commission for Human Rights.

6. To make a voluntary payment of $2000 to the order of the State of New York towards the cost of this investigation, tendering such payment to the Attorney General simultaneously with the execution of the within consent.

No offer, agreement nor inducement of any kind has been made to me, to Office Temporaries, Inc., or to any of its officers or directors, by the petitioner herein or its attorney in order to procure this consent, which is a wholly free and voluntary act on my part.

Dated: New York, New York
August 9, 1962.

(Sgd.) Nathan W. Picker
NATHAN W. PICKER
OFFICE TEMPORARIES, INC.

By

(Sgd.) Nathan W. Picker
President

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

On this 9th day of August, 1962, before me personally came Nathan W. Picker to me known to be the person who executed the foregoing consent and duly acknowledged to me that he executed the same; also, to me known to be president of Office Temporaries, Inc., a corporation named in and which executed the foregoing consent, and he stated that he knows the seal of said corporation, that the seal affixed to said instrument is the seal of said corporation, that it was so affixed by the Board of Directors thereof, and that he signed his name thereto by like order.

(Sgd.) Philip Watson
PHILIP WATSON
Notary Public State of
New York

CORE
Gen

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI

RUPERT P.H. CRAWFORD, RONALD L. MITCHELL, WALTER R. MITCHELL, BETTE ANNE POOLE, ELDRI J. SALTER and JOHN R. SALTER,

Petitioners,

-against-

THE STATE OF MISSISSIPPI

Respondent.

STATE OF MISSISSIPPI)
) ss.:
COUNTY OF HINDS)

JOHN R. SALTER, being duly sworn, deposes and says:

I am one of the petitioners herein and I am submitting this affidavit in support of their application, pursuant to 28 U.S.C. 144, for the disqualification of Hon. WILLIAM HAROLD COX, United States District Judge for the Southern District of Mississippi, from ruling on this petition.

In view of what petitioners consider to be a significant bias on the part of Judge Cox toward them and the cause of racial integration which their picketing was designed to advance, and the fact that there is no appeal from a decision to remand a case to a state court which has been removed pursuant to the provisions of 28 U,S.C. 1443, it is submitted that this application must be granted.

The grounds for petitioners' application are as follows:

1. Upon information and belief, Judge Cox was, prior to his elevation to the federal bench, and remains, a member of the White Citizens Council, a Mississippi organization dedicated to the maintenance and preservation of racial segregation within that state.

2. Upon information and belief, Judge Cox believes in and subscribes to the principles of racial segregation as enumerated and proclaimed by the said White Citizens Council.

3. Upon information and belief, that, during the summer of 1962, Mayor Allen Thompson of Jackson, Miss...

sippi, an outspoken advocate of racial segregation, in a public address, stated that he was grateful to Judge Cox and Judge Sidney Mize for helping, from the bench, to preserve Mississippi traditions.

4. That Judge Cox was, prior to his elevation to the federal bench, chairman of the Hinds County Democratic Executive Committee and, upon information and belief, in such capacity invited Congressman John Bell Williams, among others, to give racist speeches, in Jackson, Mississippi.

5. Upon information and belief, that Judge Cox originates from Indianola, Mississippi, the city where the White Citizens Council was founded, and which is in Sunflower County, the home county of United States Senator James O. Eastland, an outspoken advocate of racial segregation.

6. Upon information and belief, that Judge Cox was widely heralded as Senator Eastland's choice for the judgeship which henow holds and that rumors as to his appointment were current long before the appointment in question.

7. Upon information and belief, Judge Cox, prior to his appointment to the bench, helped to write racist speeches for Circuit Judge Tom Brady whose "Black Monday" speech bitterly attacked the decision of the United States Supreme Court declaring segregation in the public schools unconsttitutional.

8. Upon information and belief, that Judge Cox, prior to his elevation to the bench, assisted with the preparation of the "breach of the peace" statute which has been consistently employed by the State of Mississippi to thwart all peaceful attempts at integration within the state.

9. That, on August 26, 1961, in deciding five other removal cases (Elmer Brown, 3196-Cr; James Carey, 3197-Cr; Orville Luster, 3199-Cr; Judith Frieze, 3198-Cr; and Shirley Smith, 3200-Cr) adversely to the petitioners therein, all Freedom Riders being prosecuted by Mississippi under the aforesaid "breach of the peace" statute, Judge Cox, without any evidence as to any of the facts surrounding the nature or the objectives of the petitioners' travel to Jackson, referred to them as "counterfeit citizens" whose interstate status was doubtful. Furthermore, despite the fact that there were more than 200 such cases, including those of the petitioners therein, then pending for trial by jury in the state courts, he proclaimed, without one shred of evidence before him, that "the arresting officer promptly and efficiently and very properly discharged his duty in arresting each of these criminals under such circumstances."

10. When petitioner's counsel, in a letter application for a rehearing pointed out the above facts and others of similar nature to Judge Cox on September [illegible], 1961, by referring, two days later, to Judge Cox responded the attorney's "publicity clients cases," and suggested that said attorney, who is of counsel to the present petitioner, had been guilty of some impropriety in seeking a rehearing of Judge Cox's decision. Upon information and belief, Judge Cox was motivated by his antipathy to the petitioners and their belief on racial integration, a feeling that might well be present in the instant proceeding.

Because petitioners sincerely believe that there are important constitutional issues involved in this perceeding and that their resolution may have widespread and lasting effects, they feel that they should be decided, particularly in a non-appealable case, by a court which is concerned only with the issues and not with the status of the petitioners and the nature of their objective. Petitioners fully realize that the nature of their activities in the locale in which they occurred create emotional issues that, unfortunately, tend to influence the determination of their cases. They ask only for a completely impartial decision and feel that, in this proceeding, it might be very difficult for them to obtain it.

WHEREFORE, petitioners pray that Judge Cox proceed no further with the within proceeding and that another judge be assigned to hear same.

JOHN R. SALTER

Sworn to before me this
day of December 1962.

CERTIFICATE OF GOOD FAITH

WILLIAM M. KUNSTLER, one of the attorneys for petitioners, hereby certify that this affidavit is submitted in good faith and that it is not intended either to secure delay or to interfere with the judicial process unnecessarily. Its sole purpose is to protect the rights of the petitioners.

WILLIAM M. KUNSTLER

IN THE UNITED STATES DISTRICT COURT FOR EASTERN DISTRICT

OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG

AND WILLIE H. MABREY

COMPLAINANTS

VS NO. _____

MRS. NELSON I. STEPHENS,

Individually and as Chairman
of Congress of Racial Equality,
agents, servants, attorneys and
all members

DEFENDANTS

AFFIDAVIT SHOWING PREJUDICE

We, Mrs. Nelson I. Stephens, individually and as Chairman of local affiliate of Congress of Racial Equality, and Winston Lockett, field worker, employee, and agent of said Congress of Racial Equality, being duly sworn, do say that we are defendants in the above-entitled cause which is now pending for trial in the Chancery Court of the State of Tennessee in and for the County of Anderson, and that from prejudice and local influence we shall not be able to obtain justice in said State Court or in any other State court to which we may, under the laws of said State, have the right, on account of such prejudice and local influence, to remove said cause.

(Mrs) Nelson I. Stephens
Affiant

Winston Lockett
Affiant

Subscribed and sworn to before me
this 3rd day of August, 1963

Notary Public

My commission expires July 11, 1966.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG

AND WILLIE H. MABREY

VS NO._____

MRS. NELSON I. STEPHENS,

Individually and as Chairman
of Congress of Racial Equality,
Agents, servants, attorneys and
all members

TO THE HONORABLE ALLEN ELLIOTT, SOLICITOR FOR COMPLAINANTS:

Please take notice that on August 16, 1963 at _____ o'clock A. M., or as soon thereafter as counsel may be heard, I shall apply to his Honor, Judge Robert L. Taylor of the District Court of the United States in and for the Eastern District of Tennessee, sitting at Knoxville, for removal of the above entitled cause from the Chancery Court of the State of Tennessee to the said District Court, on the ground of prejudice or local influence.

I herewith serve upon you a copy of the petition and affidavit, which will be presented to the District Court at the time aforesaid.

Martin Frederick

Solicitor for defendants

This August 5th, 1963

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG

AND WILLIE H. MABREY

VS NO._____

MRS. NELSON I. STEPHENS

Individually and as Chairman
of Congress of Racial Equality,
agents, servants, attorneys and
all members

ANSWER OF DEFENDANTS AND CROSS BILL

Mrs. Nelson I. Stephens, individually and as Chairman of local affiliate of Congress of Racial Equality, and Winston Lockett, field worker, employee, and agent of Congress of Racial Equality, for answer in their own behalf, for Congress of Racial Equality, known as CORE, its agents, servants, attorneys, and members, to original bill filed against them in the Chancery Court of Anderson County, Tennessee, say:

I

That they admit the allegations of first paragraph of said original bill, except they have no knowledge of extent of complainants' investment in equipment.

II

That they deny entering into a conspiracy, legal or otherwise, to put complainants out of business, but admit they have picketed complainants' place of business in peaceful, lawful manner, carrying placards for the information and edification of the general public, such as: "This Laundromat is Segregated", "Make Oak Ridge An Open City", "Support Human Rights", "Segregation Hurts Oak Ridge and Harms America"; that they deny that they have blocked ingress and egress of customers; that they have no knowledge of any

alleged skirmish involving an employee of complainants, and demand proof of same; that they admit they have sought laundry service on premises of complainants' business, and have been ejected because of the dark color of skin with which nature endowed them; that they deny their activities have been illegal or in any degree improper, and that the only illegal activity has been that of complainants in their biased, discriminatory rejection of the patronage of Negro American Citizens.

III

That they would show the court that business of complainants is licensed as a privilege by the State of Tennessee, County of Anderson, and municipal corporation of Oak Ridge, which have no right under the Fourteenth Amendment to the United States Constitution to practice racial discrimination, and no right to grant such a privilege to private enterprise licensed to do business with the general public; that said business of complainants is also subject to governmental health and sanitation regulations and periodic inspections, and subject to regulation by the zoning ordinances of the City of Oak Ridge.

IV

That the City of Oak Ridge and outlying areas comprised a project of the United States government, in which said government acquired title to all the land in said area, that it is a government-financed re-development area, and no business deriving title directly or indirectly, by purchase, lease or rental, may practice racial discrimination, under the equal protection clause of the Fourteenth Amendment of the United States Constitution, much less invoke and enlist the aid of a state court to enforce the practice of racial discrimination in the operation of their business; that the United States government retained certain rights and controls over future uses of this property, in order to fulfil the public purposes for which the project was originally designed; that owners, lessees and renters of property in the Oak Ridge area, deriving their title from the Government, are bound by the equal protection clause prohibiting discrimination on the grounds of race or color.

V

Having answered all matters contained in said original bill that they are advised are material, and generally denying all matters not specifically admitted or denied, they are further advised that the facts hereinabove set out entitle them to assume the role of complainants.

VI

That in their role of cross-complainants, respondents aver that on ~~Sunday~~ Saturday evening July ~~28~~ 27, 1963 eight members of CORE, including Mrs. Nelson I. Stephens, were engaged in washing their clothes at complainants' place of business, when complainant Young and an assistant carried all of them forcibly off the premises, in violation of their rights, whether they were "roughly yanked and dragged" according to official CORE account, or "carried gently" according to the report of said Young to The Oak Ridger.

VII

The premises considered, cross-complainants respectfully pray:

1. That by the Court's order defendants be allowed to assume the role of cross-complainants against the original complainants, that the foregoing answer be treated as a cross-bill, and that cross-defendants be ordered to answer same.

2. That at the hearing of the case, on proof or bill and answer, that complainants be perpetually enjoined, inhibited, and restrained from the practice of racial discrimination in the Oak Ridge area, from interfering, prohibiting, molesting or threatening any patron of their business on account of race or color.

3. That they have such other and further relief as they may be entitled in law and equity.

This is the first application for extraordinary relief in this case, but same is not prayed until the hearing of the case, on proof or bill and answer.

Congress of Racial Equality

BY (Mrs) Nelson I. Stephens
Defendant and cross-complainant

(Mrs) Nelson I. Stephens
Defendant and cross-complainant

Mr. Winston Lockett
Defendant and Cross-comp.

Southern & Southern,
Solicitors for defendants
and Cross-complainants

BY Martin Southern

STATE OF TENNESSEE

KNOX COUNTY

Mrs. Nelson I. Stephens and Winston Lockett, being duly sworn, on oath say that they are the defendants and cross-complainants above named, that they have read their foregoing answer and cross-bill, and that the same is true of their own knowledge, excepting as to matters which are therein stated to be alleged on information and belief, and as to those matters they believe them to be true.

Congress of Racial Equity

By (Mrs.) Nelson I. Stephens, Chairman

(Mrs.) Nelson I. Stephens

Mr. Winston Lockett

Subscribed and sworn to before me
this 3rd day of August, 1963.

NOTARY PUBLIC

My commission expires July 11, 1966.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG

AND WILLIE H. MASSEY

VS No. _____

MRS. NELSON I. STEPHENS,

Individually and as Chairman
of Congress of Racial Equality,
agents, servants, attorneys, and
all members

NOTICE OF MOTION TO DISSOLVE INJUNCTION

At._____ A. M. on the 16th day of August, 1963, or as soon thereafter as we may be heard in open court by Robert L. Taylor, Judge, in the courtroom of the United States District Court at Knoxville, Tennessee, we will move that the injunction in said cause be dissolved, which motion will be based on bill and answer.

This August 5, 1963

Solicitor for defendants

I have served copy of foregoing Notice of Motion and copy of answer to original bill on Honorable Allen Elliott, Solicitor for complainants on this August 5, 1963.

Solicitor for defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG

AND WILLIE H. MABREY

VS

No. _____

MRS. NELSON I. STEPHENS,

Individually and as Chairman
of Congress of Racial Equality,
agents, servants, attorneys, and
all members

ACKNOWLEDGEMENT OF RECEIPT

I, Allen Elliott, solicitor for Joe E. Young and Willie H. Mabrey, acknowledge receipt from Martin Southern of copies of the following:

1. Petition For Removal From The Chancery Court
2. Affidavit Showing Prejudice
3. Answer of defendants and cross bill
4. Notice of Motion To Dissolve Injunction

This 5th day of August, 1963.

SOLICITOR FOR COMPLAINANTS

IN THE CHANCERY COURT FOR ANDERSON COUNTY, TENNESSEE

JOE E. YOUNG
AND WILLIE H. MABREY
COMPLAINANTS

VS NO. 7607

MRS. NELSON I. STEPHENS, ET AL
DEFENDANTS

NOTICE OF PETITION FOR REMOVAL TO FEDERAL COURT

Please take notice that on August 5, 1963 defendants in this case filed a Petition For Removal of this case to the United States District Court for the Eastern District of Tennessee at Knoxville.

In compliance with the rules of the said District Court you are herewith furnished copy of said petition and of the bond filed in said District Court, as follows:

PETITION FOR REMOVAL FROM THE CHANCERY COURT OF STATE OF TENNESSEE IN AND FOR THE COUNTY OF ANDERSON

TO THE HONORABLE ROBERT L. TAYLOR, THE JUDGE OF THE UNITED STATES DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TENNESSEE:

Your petitioner, the above-named Mrs. Nelson I. Stephens, individually and as chairman of local affiliated organization known as Congress of Racial Equality, agents, servants, attorneys, and all members, respectfully shows to the Honorable Court that Joe E. Young and Willie H. Mabrey, as complainants, have brought suit of a civil nature in Chancery of the State of Tennessee, in

and for the County of Anderson, against your petitioner, Mrs. Nelson I. Stephens and Congress of Racial Equality of which she is local chairman, agents, servants, attorneys and all members, and that the matter or matters in controversy involve and embody the civil rights of defendants under the United States Constitution, the first and fourteenth Amendments to said Constitution, and the deprivation of rights by the injunctive process of said state court.

That the said controversy is between citizens of different states; that the complainants Joe E. Young and Willie H. Mabrey were at the time of the commencement of this suit and still are citizens of the State of Tennessee, the State wherein such suit is pending, and are believed to reside at Oak Ridge, Tennessee; and that your petitioner, Mrs. Nelson I. Stephens, is also a resident of Tennessee, in Oak Ridge, Tennessee, but Congress of Racial Equality of which she is local affiliate chairman, was at the time of the commencement of this suit and still is a non-profit corporation organized and existing under and by virtue of the laws of the State of New York, and that most of the agents, servants, attorneys and members of said Organization are also non-residents of the State of Tennessee; that your petitioner as Chairman of Congress of Racial Equality, for and in behalf of same, agents, servants, attorneys and members desires to remove this suit which is now pending and undetermined in said State court, before the trial thereof, into the District Court of the United States to be held in the Eastern District of Tennessee.

Your petitioner further shows unto this Honorable Court that from prejudice and local influence in favor of the complainants and adverse to defendants, because of their campaigns in behalf of civil rights of a minority group, against bias, discrimination and segregation, that defendants will not be able to obtain justice

in said State Court or in any other state court to which said defendants may, under the laws of the state, have a right to remove said cause, on account of such prejudice or local influence.

Wherefore your petitioner prays that an order be entered for the removal of said case from the Chancery Court of said State to this Court, and that a writ of certiorari issue for the return to this Court of a certified copy of the record in said State court.

(s) Mrs. Nelson I. Stephens
Petitioner

Southern & Southern,
Solicitors for Petitioners
BY Martin Southern

COPY OF BOND

Congress of Racial Equality, Mrs. Nelson I. Stephens, and Winston Lockett, principals, and Martin Southern, surety, bind ourselves to Joe E. Young and Willie H. Mabrey in the sum of two hundred and fifty dollars, conditioned that said principals prosecute with effect cross-bill filed by them in this case.

Congress Of Racial Equality
By Mrs. Nelson I. Stephens

Mrs. Nelson I. Stephens

Winston Lockett
Principals

Martin Southern, Surety

This August 6, 1963.

Martin Southern
Solicitor for defendants

IN THE CHANCERY COURT OF ANDERSON COUNTY, TENNESSEE

JOE E. YOUNG
AND WILLIE H. MAHREY

NO. 7607

VS

MRS. NELSON I. STEPHENS

RECEIPT

Receipt of copies of Petition of Defendants For Removal of this case to the United States District Court and bond, this August ____, 1963.

J. E. Lawson
Clerk and Master

BY_____

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE, NORTHERN DIVISION

JOE E. YOUNG
AND WILLIE H. MABREY

COMPLAINANTS

VS

NO._____

MRS. NELSON I. STEPHENS,
Individually and as Chairman
of Congress of Racial Equality,
Agents, servants, attorneys and all
members.

DEFENDANTS

PETITION FOR REMOVAL FROM THE CHANCERY COURT OF STATE OF TENNESSEE,
IN AND FOR THE COUNTY OF ANDERSON

TO THE HONORABLE ROBERT L. TAYLOR, THE JUDGE OF THE UNITED STATES DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF TENNESSEE:

Your petitioner, the above-named Mrs. Nelson I. Stephens, individually and as chairman of local affiliated organization known as Congress of Racial Equality, agents, servants, attorneys and all members, respectfully shows to the Honorable Court that Joe E. Young and Willie H. Mabrey, as complainants, have brought suit of a civil nature in Chancery of the State of Tennessee, in and for the County of Anderson, against your petitioner, Mrs. Nelson I. Stephens and Congress of Racial Equality of which she is local chairman, agents, servants, attorneys and all members, and that the matter or matters in controversy involve and embody the civil rights of defendants under the United States Constitution, the first and fourteenth Amendments to said Constitution, and the deprivation of rights by the injunctive processes of said state court.

That the said controversy is between citizens of different states; that the complainants Joe E. Young and Willie H. Mabrey were at the time of the commencement of this suit and still are citizens of the State of Tennessee, the State wherein such suit is pending, and are believed to reside at Oak Ridge, Tennessee; and that your petitioner, Mrs. Nelson I. Stephens, is also a resident of Tennessee, in Oak Ridge, Tennessee, but Congress of Racial Equality of which she is local affiliate chairman, was at the time of the commencement of this suit and still is a non-profit corporation organized and existing under and by virtue of the laws of the State of New York, and that most of the agents, servants, attorneys and members of said Organization are also non-residents of the State of Tennessee; that your petitioner as Chairman of Congress of Racial Equality, for and in behalf of same, agents, servants, attorneys and members, desires to remove this suit which is now pending and undetermined in said State court, before the trial thereof, into the District Court of the United States to be held in the Eastern District of Tennessee.

Your petitioner further shows unto this Honorable Court that from prejudice and local influence in favor of the complainants and adverse to defendants, because of their campaigns in behalf of civil rights of a minority group, against bias, discrimination and segregation, that defendants will not be able to obtain justice in said State court or in any other state court to which said defendants may, under the laws of the state, have a right to remove said cause, on account of such prejudice or local influence.

Wherefore your petitioner prays that an order be entered for the removal of said case from the Chancery Court of said State to this Court, and that a writ of certiorari issue for the return to this Court of a certified copy of the record in said State court.

(Mrs.) Nelson I. Stephens
Petitioner

Southern & Southern,
Solicitors for Petitioners

By Martin Southern

STATE OF TENNESSEE

KNOX COUNTY

Mrs. Nelson I. Stephens, being duly sworn, on oath says that she is the petitioner above named; that she has read the foregoing petition, and that the same is true of her own knowledge, excepting as to matters which are therein stated to be alleged on information and belief, and as to those matters she believes them to be true.

(Mrs) Nelson I. Stephens
Affiant

Subscribed and sworn to
before me this 3rd day of August,
1963.

Notary Public

My commission expires July 11, 1966.

IN THE UNITED STATES DISTRICT COURT,

FOR THE EASTERN DISTRICT OF TENNESSEE,

NORTHERN DIVISION

JOE E. YOUNG

AND WILLIE H. MABREY

COMPLAINANTS AND CROSS-COMPLAINANTS

VS NO. 4772

MRS. NELSON I. STEPHENS, ET AL

DEFENDANTS AND CROSS-COMPLAINANTS

EXHIBITS FILED BY DEFENDANTS AND CROSS-COMPLAINANTS

IN SUPPORT OF THEIR PETITION FOR REMOVAL

EXHIBIT ONE

VERBATIM COPY OF ORIGINAL BILL SERVED ON THEM

TO THE HONORABLE A. G. SHUMATE, CHANCELLOR, HOLDING
THE CHANCERY COURT FOR ANDERSON COUNTY, TENNESSEE

JOE E. YOUNG and

WILLIE H. MABREY

Complainants

V. No._____

MRS. NELSON I. STEPHENS, individually,
and as Chairman of an organization described
as CORE, agents, servants, attorneys and all
members of said organization, and other parties
whose names are unknown but who are members
of the conspiracy herein described

Defendants

ORIGINAL BILL

COMPLAINANTS WOULD RESPECTFULLY SHOW UNTO THE COURT:

That they own and operate a launderette doing business at 222 and 232 Jefferson Court, Oak Ridge, Anderson County, Tennessee. Said launderette is known as "Multi-Matic Laundry". Complainants would show that in the operation of their business that it is more or less a self-service laundry, that is, people bring their laundry in and use complainants'washing machines and driers, but first they must deposit coins, depending on the amount of laundry to be done. Also, complainants operate a dry cleaning system, which operates in the same manner. Complainants have invested many thousands of dollars in their building at the above described address, and in their equipment, machinery, etc.

That defendants, beginning Saturday, July 27, 1963, have entered into an illegal conspiracy to put your complainants

out of business. In carrying out this illegal conspiracy the defendants on Saturday, July 27, on July 28th, 1963, and on this date, have picketed complainants' place of business, that is, these large groups will congregate in front of complainants' business, will march along the front of complainants' business in such close proximity that it is impossible for complainants' customers to enter their establishment. The defendants carry cards, indicating that your complainants are unfair to colored people. They not only march in front of complainants' business,that is on public property,but come onto complainants' property and do part of their congregating, marching and picketing in complainants' parking area, and especially at complainants' entrances, thus by blocking the entrances and blocking the parking ways they are keeping complainants' customers from their establishment, as aforesaid. Some of the defendants have insisted upon coming into complainants' building, and on one occasion there was some skirmish there between one of complainants' employees and one of the defendants whose name is unknown because he was refused admittance. He did not pretend to come upon the property as a customer, but merely to use a telephone.

Your complainants aver that they do not have an adequate remedy at law to restrain the illegal activities of the defendants herein recited, and that unless defendants are enjoined from interferring with complainants' business they will be irreparably damaged.

PREMISES CONSIDERED, Complainants,pray:

1. THat process issue and be served upon Mrs. Nelson I. Stephens, as Chairman of CORE, and all other members, agents, servants and employees of CORE, and that they be required to answer this bill fully and truly, but not under oath, the oaths to their answers being waived.

2. That an injunction issue, forthwith, restraining the defendants, as aforesaid, from coming on the property of these complainants, or from in any wise interferring with the business of complainants, that is, interferring with their customers entering complainants' place of business, or doing anything towards injuring complainants' business, and upon the hearing said injunction be made permanent.

3. THat if mistaken in their special prayer they have such other, further, additional and general relief as the facts may show them entitled upon the hearing of this cause.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS CAUSE.

_____

_____
Solicitor for Complainants
ALLEN M. ELLIOTT
1516 Bank of Knoxville Bldg.
Knoxville, Tennessee

STATE OF TENNESSEE
COUNTY OF KNOX

JOE E. YOUNG made oath in due form of law that he had read the foregoing bill, and that the statements made therein of his own knowledge were true, and those made upon information and belief he verily believes to be true.

_____

Sworn and subscribed to before me
this 29th day of July, 1963

_____
NOTARY PUBLIC

My commission expires July 21, 1965.

F I A T

TO THE CLERK AND MASTER:

File the foregoing bill and issue the injunction as sought therein, upon the complainants executing an injunction bond in the amount of $_____.

This 29th day of July, 1963.

_____
CHANCELLOR

EXHIBIT TWO - VERBATIM COPY OF SUBPOENA

TO ANSWER AT RULES

STATE OF TENNESSEE, CHANCERY COURT AT CLINTON

TO THE SHERIFF OF ANDERSON COUNTY, GREETING:

SUMMON Mrs. Nelson I.Stephens, as Chairman of CORE, and all others, members, agents, servants and employees of CORE, to appear in person or by attorney before the Chancery Court at Clinton, Tennessee, on or before the 5 day of Aug., 1963, next, it being the 1st Monday in AUG. to answer the Original Bill which Joe E. Young and Willie H. Mabrey has filed in said Cour against you and have you then and there this writ.

Witness J. E. Lawson, Clerk and Master of said Court, at Office in Clinton, Tennessee this 29 day of July, 1963.

J. E. LAWSON, CLERK AND MASTER

BY Susie Harris
Deputy CLERK and MASTER

NOTICE

TO ABOVE NAMED DEFENDANT Mrs. NELSON I. Stephens, et al

YOU are hereby notified that you are required to make defense in this case on or before the 1st MONDAy of AUG.1963.

J. E. LAWSON
CLERK AND MASTER

I, Martin SOUTHERn, solicitor for defendants, and cross-complainants, do hereby certify that above copies are exact copies of papers served on said defendants and cross-complainants, that he is reliably informed, although not appearing in said exhibits, that fiat for injunction in said suit was signed by Honorable Charles E. Dawson, CHANCELLOR, and that injunction notice was served on them by a deputy sheriff of ANDERSON COUNTY, with other papers herein described.

This AUGUST 6, 1963.

SOLICITOR FOR DEFENDANTS AND
CROSS COMPLAINANTS

I further certify that I have mailed copy of foregoing exhibits for verification to HONORABLE ALLEN M. ELLIOTT, SOLICITOR for complainants and cross defendants, by United STATES MAIL, THIS AUGUST 6, 1963.

SOLICITOR FOR DEFENDANTS AND
CROSS COMPLAINANTS

COPY

RECEIVED
SEP 7 1961
VLADECK & ELLIS

September 5, 1961

Mr. James Farmer
Congress of Racial Equality
38 Park Row
New York 38, New York

Re: City of Hartsville vs
Williams and Watts

Dear Mr. Farmer:

Enclose you will find a copy of Judge Spruill's Order in the above entitled matter. We are filing this Order with the Clerk of Court and it is our expectation that the City of Hartsville will not appeal in this matter.

We hope that some of the other cases will be decided in a like manner. As soon as the time for appeal of this decision has elapsed we will secure the bond that was posted and return the same to you.

Yours very truly,

Ernest A. Finney, Jr.

EAF/stw

cc: Mr. Carl Rachlin, Attorney
Vladeck and Ellias
Attorneys-At-Law
280 Broadway
New York 7, New York

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN COURT OF GENERAL SESSIONS

Copy Received
9/7/61 by mail
VLADECK, WAIS
Attorneys for

City of Hartsville,

vs.

Herbert Williams and Horace Watts

ORDER

The Defendants above named were tried in Recorder's Court of the City of Hartsville, and were convicted of distributing certain literature in violation of Section 21-14 of the Municipal Ordinances of the City of Hartsville. They appealed from this conviction to the Court of General Sessions.

The Appeal in this matter came on to be heard before me at Darlington and was argued by Mr. Ernest A. Finney, Jr., for the appellants and Mr. Philip Wilmeth for the City of Hartsville.

The defendants were tried under an ordinance which was revised in the year 1953. It appears that at the trial the ordinance as it existed before such revision was read into the record and that the defendants were tried on such ordinance.

Counsel agreed that the following ordinance was duly enacted by the City Council of Hartsville in the year 1953.

> Section 21-14 The Code of the City of Hartsville, South Carolina, 1952, is hereby amended by striking out all of said section and inserting in said Code a new section which shall read as follows:
>
> Section 21-14:
>
> It shall be unlawful for any persons to distribute or cause to be distributed any printed or written hand-bill or circular containing any <u>commercial advertisement</u> in or upon any street, sidewalk, store or residence, or in any other public place in the City, by delivering the same to passers-by, by placing or leaving the same in automobiles or other vehicles, or by placing or leaving the same directly in or upon any such street, sidewalk, store, residence, lot or other public place.

It shall also be unlawful for any person to distribute or cause to be distributed any printed or written handbill or circualr of any nature whatsoever by throwing, dropping or scattering the same, broadcase, any where in the city.

Section 2, Repeal all other ordinances.

Section 3. Effective immediately.

Done and ratified 14th April, 1953.

Certainly the conviction of the defendants cannot be sustained by reference to the ordinance as it had existed before the revision of the Municipal Code in 1953. It appears that even if it could be considered with reference to the revised ordinance, that it likewise cannot be sustained.

From the transcript of the trial it appears that the defendants/ action consisted of manually delivering a handbill on the streets of the City of Hartsville. By agreement of counsel, a copy of this handbill was presented to me at the time of the argument on the appeal. Such handbill was a plea that the recipients of it refrain from patronizing two named establishments on the grounds that such establishments discriminated in failing to serve Negro customers. It appears that the handbill cannot fairly be considered to be a commertial advertisement within the meaning of the revised ordinance of 1953. There was no testimony whatsoever that such handbills were distributed by the defendants by throwing, dropping or scattering the same broadcast any where in the City.

For the foregoing reasons it is unnecessary to consider the arguments of the appellants as to the constitutionality of the ordinance, as applied to the defendants above named. Now, Therefore,

IT IS ORDERED that the appeal of the defendants above named is sustained, and their conviction is reversed.

Cheraw, South Carolina
September 2, 1961

J.A. Spruill, Jr.
Resident Judge
Fourth Judicial Circuit

1/

294 F.d 150

Dixon et al. v. Alabama State Board of Education et al., 294 Fed 150 (USCA - 5th, 1961).

Rives, J.

{see p. 6, bottom for "action"}

Facts: 1. The Πs, and others, were ~~dismissed~~ expelled from Alabama State College following their participation in demonstrations aimed at segregated lunch counters. The only demonstration at which all the Πs participated in was held Feb. 25, 1960.

2. Letters dated March 7, 1960, signed by the President notified the Πs that they were the subjects of an "expulsion-directive by the State Board of Education."

3. No explicit reasons were given for the expulsions but the "Registration-Announcement of Alabama State Colleges" concerning reasons that students may be expelled, was ~~not~~ set out, with emphasis apparently on

> "...c. For Conduct Prejudicial to the School and for Conduct Unbecoming a Student or Future Teacher in Schools of Alabama, for Insubordination and Insurrection, or for Inciting Other Pupils to Like Conduct..."

4. The students received no other notice of expulsion other than the letters, supra.

Issue: Whether due process requires notice and some opportunity for hearing before students

294 F.2d 150

at a tax supported college are expelled for misconduct?

Held: Yes: reversed and remanded.

Reasoning: 1. While there is no statute of Alabama requiring formal charges or a hearing the ~~trial~~ evidence before the District Court indicated the usual practice of the College was to give the student a hearing and the opportunity to offer defenses.

2. addressing itself to the District court and the argument that it a ~~the~~ right to attend a public college is not in and of itself a constitutional right, the court said, citing Cafeteria and Restaurant Workers Union, 81 S.Ct. 1748), that once the party is in the college then to oust him, it must be done with due process.

3. Answering the argument that a student waives his right to a hearing inasmuch as attendance at the college is voluntary and not a state requirement, the courts said that ~~that~~ the Board of Educations's regulations do not indicate that a student waives his right to a hearing and notice

before expulsion. The d court said:
"In absence of such an explicit waiver, Alabama has required that even private associations must provide notice and a hearing before expulsion."

4. "The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the Ps were students in good standing. It requires no argument to demonstrate that ~~education~~ education is vital and, indeed, basic to civilized society. Without sufficient education the Ps would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens.

"There was no offer to prove that other colleges are open to Ps. If so, the Ps would nonetheless be injured by the interruption of their course of studies in mid-term. It is most unlikely that a public college would accept a student expelled from another public college of the same state. Indeed, expulsion may well prejudice the

294 F 2d 150

student in completing his education at any other institution. Surely no one can question that the right to remain at the college in which the Π's were students in good standing is an interest of extremely great value."

5. The court distinguishes this case from cases cited by the District court inasmuch as private institutions were involved & and therefor a matter of contract had to be considered.

6. The court cites Professor Warren A. Seavey who, commenting on Tracy v. Adams, 134 F. Supp 235, said:

"At this time when many are worried about dismissal from public service, when only because of the overriding need to protect the public safety is the identity of informers kept secret, when we proudly contrast the full hearings before our courts with those in the benighted countries which have no due process protection, when many of our courts are so careful in the protection of those charged with crimes that they will not permit the use of evidence illegally obtained, our sense of justice should be outraged by

denial to students of the normal safeguards. It is shocking that the officials of a state educational institution, which can function properly only if our freedoms are preserved, should not understand the elementary principles of fair play. It is equally shocking to find that a court supports them in denying to a student the protection given to a pickpocket."

The court said: "We are confident that precedent as well as a most fundamental constitutional principle support our holding that due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct."

7. Other dicta:

"... In the disciplining of college students there are no considerations of ~~mm~~ immediate danger to the public, or of peril to the national security, which should prevent the Board from exercising at least the fundamental principles of fairness ~~plan~~ by giving the accused student notice of the charges and an opportunity to be heard

294 F.2d 150

in their own defense..."

8. "In the instant case, the student should be given the names of the witnesses against him and an oral or written report on the facts to which each witness testifies. He should also be given the opportunity to present to the Board, or at least to an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection. If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel that the requirements of due process of law will have been fulfilled."

"action": preliminary and permanent injunction ~~[illegible]~~ restraining Bd. of Ed. et al. from obstructing their right to attend college.

/ D D CR

Resident "D"; Room 331
Tuskegee Institute, Alabama
February 15, 1962

Mr. James J. McCain
38 Park Row
New York 38, New York

Dear Mr. McCain;

Upon calling the CORE office last night and talking to Hank Thomas, I was instructed to send this summons to you.

Yours truly,
Fred N. Grimes Jr.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
OF ALABAMA, MONTGOMERY COUNTY, ALABAMA
IN EQUITY

STATE OF ALABAMA ON THE RELATION
OF MACDONALD GALLION, ATTORNEY
GENERAL OF THE STATE OF ALABAMA,

Complainant

Vs.

CORE - CONGRESS OF RACIAL EQUALITY, INC.,
a CORPORATION,

Respondent

TO THE HONORABLE JUDGES OF SAID COURT, IN EQUITY SITTING:

The State of Alabama, on the relation of MacDonald Gallion, Attorney General of the State of Alabama, respectfully represents unto your Honors as follows:

1. The Complainant, MacDonald Gallion, is the duly qualified Attorney General of the State of Alabama, and as such brings this action in the name of and for the State of Alabama.

2. The Respondent, CORE-Congress of Racial Equality, Inc., is a New York corporation with its home office at 38 Park Row, New York 38, New York, it being stated in the second paragraph of the Certificate of Incorporation of such organization that

> "The purpose for which the proposed corporation is to be formed is to eliminate racial discrimination by direct non-violent methods in places of public accomodation, education, employment, housing, voter registration and related fields."

3. Respondent has in the past, and does now, maintain in this state officers, agents, servants or employees engaged in activities designed to carry out the purposes of such organization as set out in paragraph two of this Bill of Complaint, to include the solicitation of funds, contributions and dues for and on behalf of the Respondent corporation.

4. Respondent has sponsored, financed and assisted groups commonly known and defined as "Freedom Riders" in their efforts and activities designed to forment violence in and around bus terminals

and other transportational facilities, thereby obstructing movement of bona fide interstate and intrastate commerce resulting in a restraining order being issued against such Respondent by the District Court of the United States for the Middle District of Alabama in its order of June 2, 1961.

5. That the said District Court of the United States for the Middle District of Alabama specifically found "that the so-called 'Freedom Riders' and other like groups have been and are being sponsored, financed and assisted in their actions by representatives and members in this area of the Congress of Racial Equality, Inc. (CORE);. . ." Said order further defines this sponsorship by Respondent as being "agitation."

6. Respondent has heretofore, and does now, openly and notoriously sponsor, finance and assist other known groups of agitators engaged in activities calculated and designed to violate the laws of this state relative to the private ownership and operation of property and the right to freedom from trespass thereon.

7. Respondent's officers, agents, servants, employees and members have heretofore, and do now, engage in this state in the solicitation, collection and disbursement of money in furtherance of the purposes and aims of Respondent corporation set out in paragraph two of this Bill of Complaint.

8. Respondent corporation has been and continues to do business in the State of Alabama in violation of Article 12, Section 232, Constitution of Alabama 1901 and Sections 21 (90) (91), Code of Alabama 1940, Recompiled 1958 and in violation of its Articles of Incorporation.

9. The acts of Respondent in its continuing to do business within this state to carry out the purposes outlined in its Certificate of Incorporation without first having complied with the provisions of Section 232, Constitution of Alabama 1901, and Sections 21 (90) (91), Code of Alabama 1940, Recompiled 1958, are causing irreparable injury to the property and civil rights of the residents and citizens of the

State of Alabama for which criminal prosecution and civil actions at law afford no adequate relief to prevent such continuing unlawful and harmful conduct by Respondent.

WHEREFORE, Premises Considered, Your Complainant prays:

1. That this Court will take jurisdiction of this Bill of Complaint and cause proper process to issue to the Respondent herein, requiring them to plead, answer and demur within the time required by law, or else suffer a decree pro confesso.

2. That this Court issue a temporary injunction enjoining and restraining the above named Respondent, its officers, servants, agents and employees from further conducting its business within the State of Alabama; and further enjoin said Respondent, its officers, agents, servants and employees from engaging in any activity designed to further the aims or purposes of such organization and from maintaining any agent, office or place of business within the State of Alabama.

3. To enjoin said Respondent from filing with the Department of Revenue and with the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business within the State of Alabama.

4. That upon a final hearing, the Court will issue a permanent injunction in accordance with the foregoing prayer for a temporary injunction, and in addition enter an order ousting the Respondent corporation, CORE-Congress of Racial Equality, Inc. from sponsoring, financing or assisting any of its activities within this state; and further enjoin said Respondent corporation from maintaining any office or any officers, agents, servants or employees within the State of Alabama engaged in the exercise of any of the corporate functions of said Respondent and further to enjoin said Respondent from exercising any of its corporate functions in the State of Alabama.

5. And your Complainant prays for such other further and different relief as may be meet and just in the premises and to which he is in equity and good conscience entitled.

The allegations and averments of this Bill of Complaint are supported by sworn affidavits and other documents attached hereto and marked as Exhibits "1" through "5."

MACDONALD GALLION
Attorney General of the
State of Alabama

STATE OF ALABAMA

MONTGOMERY COUNTY

Before me _____, a Notary Public in and for said State and County, personally appeared MacDonald Gallion, who being known to me, stated under oath that he is the Attorney General of the State of Alabama and as such attorney for the Complainant herein, and that the matters and things alleged and averred are true and correct to the best of his information and belief, which matters and things he verily believes to be true as herein alleged.

Done this _____ day of February, 1962.

MACDONALD GALLION

Sworn to and subscribed before me this the _____ day of February, 1962.

NOTARY PUBLIC

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL
CIRCUIT OF ALABAMA, MONTGOMERY COUNTY, ALABAMA
IN EQUITY

STATE OF ALABAMA ON THE RELATION
OF MACDONALD GALLION, ATTORNEY
GENERAL OF THE STATE OF ALABAMA,

Complainant

Vs.

CORE - CONGRESS OF RACIAL EQUALITY,INC.,
a CORPORATION,

Respondent

DECREE FOR TEMPORARY RESTRAINING ORDER
AND INJUNCTION

This cause, being submitted to the Court upon application of the Complainant, duly verified as required by law, for a temporary restraining order and injunction as prayed for in the original complaint filed in this cause, and upon consideration thereof and of the evidence offered in support thereof in the form of sworn petition and exhibits attached thereto, and the State not having elected to give bond, the Court is of the opinion same should be granted.

It Is, Therefore, Ordered, Adjudged and Decreed by the Court that the Respondent, its agents, servants, employees, attorneys, and all officers thereof and all persons in active concert or participation with Respondent, and all persons having notice of this order, be, and they hereby are, restrained and enjoined until further orders of the Court from:

1. Conducting any further business of any description or kind of Respondent corporation within the State of Alabama; engaging in any activity calculated or designed to exercise any of the corporate functions of said Respondent corporation in the State of Alabama; sponsoring, financing, aiding or assisting any group or individual in the conduct of activities or programs designed to further the aims and purposes of the Respondent corporation as set out in its

Articles of Incorporation, or to exercise any of the corporate functions thereof within the State of Alabama.

2. Engaging in this state in the solicitation, collection or disbursement of funds in furtherance of the purposes and aims of the Respondent corporation as set out in its Articles of Incorporation.

3. Maintaining in this state any offices, officers, agents, servants or employees engaging in activities designed to exercise any of the corporate functions of said Respondent corporation as set out in its Articles of Incorporation.

4. Filing with the Department of Revenue and the Secretary of State of the State of Alabama any application, paper or document for the purpose of qualifying to do business in the State of Alabama, and the proper officials of the State of Alabama from accepting, receiving, filing, considering or approving any such application, papers or documents filed by said Respondent corporation seeking to qualify to do business in the State of Alabama.

It Is Further Ordered, Adjudged and Decreed that the Sheriff of Montgomery County, Alabama, or any other lawful officer of the State of Alabama, serve a copy of the petition of this order upon the Respondent by service thereof upon any officer, agent or servant of Respondent found within the State of Alabama.

Done at Montgomery, Alabama, this the 3 day of February, 1962.

Walter B. Jones

WALTER B. JONES
Circuit Judge

January 31st, 1962

LOLIS ELIE, ESQ.

Enclosed please find copy of the complaint in the case of Dixon v. Alabama State Board of Education. If there is anything further you wish, please let me know.

Regards.

Complaint

Lt. John Dixon, et al. v. Alabama State Board of Education, et al.
(U.S. Dist. Ct., Middle Dist. of Ala., Northern Div.)

I.

A. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331, as this action arises under the Fourteenth Amendment to the Constitution of the United States, Section 1, and Title 42, United States Code, Section 1981. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of Ten Thousand Dollars ($10,000.00).

B. The jurisdiction of this Court is further invoked under Title 28, United States Code, Section 1343, in that:

This action is authorized by Title 42, United States Code, Section 1981, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Fourteenth Amendment, Section 1, of the Constitution of the United States and secured by Title 42 United States Code, Section 1983, providing for the equal rights of citizens and all persons within the jurisdiction of the United States.

This action is also authorized by Title 42 United States Code, Section 1981, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation, under color of a state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by Section 1 of the Fourteenth Amendment of the Constitution of the United States.

II

This is an action for preliminary and permanent injunctions to restrain defendants, the Alabama State Board of Education and the Alabama State College, and their agents, representatives, employees, assigns and successors, from obstructing, hindering and otherwise interfering with the right of the plaintiffs to attend the Alabama State College in Montgomery, Alabama, without expulsion, being placed on probation or otherwise disciplined for plaintiffs' peaceful demonstrations and other lawful protest against the refusal of state and local governmental authorities to comply with provisions of the Constitution of the United States concerning racial discrimination.

III

All students plaintiffs are citizens of the United States, and were students at the Alabama State College, Montgomery, Alabama, until the order of expulsion hereinafter referred to. At the time of expulsion, plaintiffs were students in good standing and, but for said order of expulsion, would still be students in good standing at defendant Alabama State College.

IV

Defendant Alabama State Board of Education, Montgomery, Alabama, was created and exists under the laws of the State of Alabama for the purpose of exercising general control and supervision over, inter alia, defendant Alabama State College for Negroes, Montgomery, Alabama, a state operated institution of higher education for Negroes located in Montgomery, Alabama. Defendant, John Patterson is Governor of the State of Alabama and Ex-Officio Chairman of said Board: defendants, Robert R. Jocklin, J. T. Albritton, J. P. Faulk, Jr., Harry M. Ayers, J. J. Benford, E. O. Eddinore, W. E. Davis, Earl Word and

Chester Austin are members of said Board. Defendant H. Councill Trenholm is the President of Defendant Alabama State College, Montgomery, Alabama.

V.

(a) On February 25, 1960 thirty-four students of Alabama State College, among whom were plaintiffs, entered the lunchroom located in the Montgomery County Courthouse, took seats at the snack bar and ordered coffee. When those in charge refused to serve them, and closed the lunchroom, the students quietly filed out of the buildings and returned to the campus.

(b) Defendant Governor Patterson on or about to-wit: March 1, 1960 issued a mandate to defendant Trenholm ordering expulsion of all Negro student leaders who demanded service at the lunchrooms in the Montgomery County Courthouse on February 25. On March 2, 1960, the expulsion mandate of defendant Patterson was ratified by a special session of the defendant State Board of Education. The Montgomery Advertiser, a newspaper of general circulation published in Montgomery, Alabama carried accounts of the expulsion of the

plaintiffs in its newspapers dated February 26, 1960, March 1, 1960 and March 3, 1960 A copy of each of said accounts are attached hereto, made a part hereof just as if fully set out herein, and marked Exhibits "A", "B" and "C" respectively. Defendant Trenholm on March 4, 1960, notified plaintiffs of their expulsion effective March 5, 1960, without any notice, hearing, or appeal.

(c) These expulsion notices merely referred each recipient to the "problem of Alabama State College" considered by the State Board of Education at its meeting on March 2, 1960 and referred to the regulations of defendant State Board of Education as set forth on page 32 of the 1958-59 Registeration Announcement of defendant Alabama State College. Page 32 thereof states:

"Pupils may be expelled from any of the colleges:

a. For ~~wilful~~ wilful disobedience to the rules and regulations established for the conduct of the schools

b. For willful and continued neglect of studies and continued failure to maintain the standards of efficiency required

by the rules and regulations

c. For CONDUCT PREJUDICIAL TO THE SCHOOL AND FOR CONDUCT UNBECOMING A STUDENT OR FUTURE TEACHER IN SCHOOLS OF ALABAMA, FOR INSUBORDINATION AND INSURRECTION, OR FOR INVITING OTHER PUPILS TO LIKE CONDUCT (Capitals in original)

d. For any conduct involving moral turpitude."

V.

a. Defendants' action of expulsion was taken without regard to any valid rule or regulation concerning student conduct, and merely retaliated against, punished and sought to intimidate plaintiffs for having lawfully sought service in a publicly owned lunchroom which service, without regard to race is guaranteed by the Fourteenth Amendment to the Constitution of the United States.

b. Expulsion from Alabama State College came without warning, notice of charges, opportunity to appear before defendants or at any other hearing, opportunity to offer testimony in defense, cross-examination of accusers,

appeal, or other opportunity to defend plaintiffs' right not to be arbitrarily expelled from defendants' college. Defendants' expulsion order, issued by the defendants functioning under the statutes, laws and regulations of the State of Alabama, thereby deprived plaintiffs of rights protected by the due process clause of the Fourteenth Amendment to the United States Constitution.

VII

Plaintiffs have suffered and are threatened with serious and irreparable harm and injury by reason of the defendants' actions herein complained of. They have no plain, adequate or complete remedy to redress these wrongs other than this suit for an injunction. Any other remedy, if such were available, would be attended by such uncertainties and delays as to deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury, and occasion damage, vexation and inconvenience, not only to the plaintiffs, but also to defendants as governmental agencies.

Wherefore: Plaintiffs pray for preliminary and permanent injunctions forever

restraining defendants from interfering with the plaintiffs' rights to remain at the defendant Alabama State College and complete their education at said college under rules and regulations no different from those applied to other colleged students similarly situated. Plaintiffs pray further that defendants be forever restrained from interfering with the right of the plaintiffs to seek rights guaranteed by the Constitution of the United States.

FRED D. GRAY,
Attorney for Plaintiffs.

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

THE FAMOUS CLOTHING COMPANY,
1112 West Third Street,
Dayton 7, Ohio

- Plaintiff

- vs -

W. S. McINTOSH, also known as
WADE McINTOSH, also known as
WAYNE McINTOSH,
1821 West Third Street,
Dayton 17, Ohio.

et al

- Defendants

CASE NO. 119993

ENTRY

The Defendants' motion to dissolve the Plaintiff's Temporary Injunction, set for hearing on February 15, 1962, is hereby overruled and said Temporary Injunction shall continue in full force and effect.

The resignation of Bush P. Mitchell as Attorney of record for the Defendants, is hereby accepted and noted.

APPROVED

Judge

CARSON & CARSON

By Brooks L. Carson
Attorneys for Plaintiff

Bush P. Mitchell
Bush P. Mitchell,
Attorney for Defendants.

N & CARSON
NEYS AT LAW
TON, OHIO

NO. 42,604

(CM)

State of Louisiana -- Parish of East Baton Rouge

NINETEENTH JUDICIAL DISTRICT COURT

SARGENT PITCHER, JR., ~~Assistant~~ District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

RONNIE M. MOORE

late of the Parish of East Baton Rouge ~~xxxxxx~~ between the dates of December 8, 1961, ~~xxxxx~~ xxxx and January 18, 1962 ~~xxxxxxxxxxxxxxxxxxxxxxxxxxxxxx~~ ~~xxxxxxxxxx~~ with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, feloniously did violate Revised Statute 14:115 in that he advocated in public and in private opposition to the Government of the State of Louisiana by unlawful means, and ~~as~~ is a member of Congress of Racial Equality, an organization known to the offender to advocate, teach and practice opposition to the Government of the State of Louisiana by unlawful means,

contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

~~xxxxxxxx~~District Attorney, Nineteenth Judicial District of Louisiana

Form 2

KENNEDY PRINT SHOP, INC.

NO. 42,603

(CM)

State of Louisiana -- Parish of East Baton Rouge

NINETEENTH JUDICIAL DISTRICT COURT

Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that

RONNIE M. MOORE

late of the Parish of East Baton Rouge, on the Eighteenth (18th) day of January in the year of our Lord One Thousand Nine Hundred and Sixty-Two (1962) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being did unlawfully violate Revised Statute 14:103.1, Paragraph A, Sub-Paragraph (4) in that with an intent to provoke a breach of the peace, he did refuse to leave the premises of Southern University after having been requested so to do by duly authorized personnel of Southern University,

contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Assistant District Attorney, Nineteenth Judicial District of Louisiana

Form 2

KENNEDY PRINT SHOP, INC.

In The
Supreme Court of the United States

October Term, 1962

No. ————

JAMES RUSSELL ROBINSON, JOSEPH PRICE PERKINS, MARVIN EDISON ROBINSON, THOMAS VAWN ROLAND, JAMES H. LANE, THOMAS WALTER GAITHER, BARRY M. COHEN, ANGELINE E. BUTLER, HENRY PRINGLE, BERNARD LAFAYETTE, OLIVER WILLIAM ST. PEE, LEON EVERETTE BAILEY, DOROTHY R. MILLER, PATRICIA STEPHENS, PRICILLA STEPHENS, ALICE M. PARHAM, ROBERT PAUL YOUNG, and DR. CARL ELLIOTT YAEGER, JR.,

Appellants,

v.

THE STATE OF FLORIDA,

Appellee.

On Appeal from the Supreme Court of the State of Florida

TOBIAS SIMON
Counsel for Appellants
233 Southeast First Street
Miami, Florida

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In The
Supreme Court of the United States

October Term, 1962

No. ————

JAMES RUSSELL ROBINSON, JOSEPH PRICE PERKINS, MARVIN EDISON ROBINSON, THOMAS VAWN ROLAND, JAMES H. LANE, THOMAS WALTER GAITHER, BARRY M. COHEN, ANGELINE E. BUTLER, HENRY PRINGLE, BERNARD LAFAYETTE, OLIVER WILLIAM ST. PEE, LEON EVERETTE BAILEY, DOROTHY R. MILLER, PATRICIA STEPHENS, PRICILLA STEPHENS, ALICE M. PARHAM, ROBERT PAUL YOUNG, and DR. CARL ELLIOTT YAEGER, JR.,

Appellants,

v.

THE STATE OF FLORIDA,

Appellee.

On Appeal from the Supreme Court of the State of Florida

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Florida filed September 19, 1962 and set forth

herein and respectfully submit this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

OPINION BELOW

The opinion of the Supreme Court of Florida is reported in 144 So.2d 811, and said opinion is set forth in Appendix A hereto.

JURISDICTION

These proceedings began with a criminal information filed against Appellants by the State of Florida on August 17, 1960 pursuant to Florida Statutes, Sec. 509.141. Appellants were found by the Criminal Court of Record in and for Dade County, Florida, to have violated said Statute, and judgments were entered against them on August 26, 1960. Notice of Appeal to the Circuit Court for the Eleventh Judicial Circuit in and for Dade County, Florida, was filed on September 21, 1960, and the judgments of the trial court were ultimately affirmed by the Supreme Court of Florida in its Order and Opinion filed September 19, 1962.

Jurisdiction of this appeal is conferred upon the Supreme Court of the United States by Title 28 U. S. Code, Sec. 1257(2). Cases sustaining the jurisdiction of this Court are *Wieman* v. *Updegraff*, 344 U.S. 183, 73 S.Ct. 215, 97 L.Ed. 216 (1952); *Winters* v. *New York*, 333 U.S. 507, 68 S.Ct. 665, 81 L.Ed. 1066 (1948); and *Lowell* v. *Griffin*, 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949 (1938).

STATUTE INVOLVED

The validity of Florida Statutes, Section 509.141 is involved. Said Statute is set forth in Vol. 2, 1961 Florida Statutes, page 2257; and is set forth in Appendix B hereto.

QUESTION PRESENTED

Where a group of Negroes and white persons in association with Negroes remain in a private restaurant after the manager thereof has refused to serve them and has requested them to leave the premises; and where the manager's refusal to serve and his request to leave is based upon the fact that said group comprises Negroes and persons in association with Negroes; and where the police, at the manager's request, arrest said group of persons because of their refusal to comply with the manager's request to leave the premises; is the arrest and subsequent conviction of this group of persons for alleged violation of Florida Statutes Section 509.141 a violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution and a violation of the privileges and immunities of State and Federal citizenship guaranteed by the Federal Constitution?

STATEMENT

The State of Florida filed an information against Appellants which charged that on August 17, 1960 they did, in Miami, Florida:

> "unlawfully remain or attempt to remain in a restaurant after being requested to depart there-

from in violation of Section 509.141(3), Florida Statute, in that the above-named defendants at the aforesaid time and place did then and there enter the premises located at 5941 Northwest 7th Avenue, in the County and State aforesaid, said premises being then and there owned and operated by SHELL CITY, INC., a Florida Corporation, and which said premises were then and there being operated as a restaurant under the name SHELL CITY RESTAURANT; that the above-named defendants did then and there seat themselves as guests at tables in the aforesaid restaurant; and that said above-named defendants did then and there unlawfully remain or attempt to remain in the aforesaid restaurant after said above-named defendants had been requested to depart therefrom by the manager, assistant manager, or other person in charge or in authority of the aforesaid restaurant, said manager, or other person in charge or in authority of the aforesaid restaurant being then and there of the opinion that if the above-named defendants were entertained or served it would be detrimental to the said restaurant, contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Florida." (R. 2, 3)

Trial was held in the Criminal Court of Record in and for Dade County, Florida on August 26, 1960. Following the presentation of the State's case, Appellants moved for a judgment of acquittal, but their motion was denied (R. 61). The Appellants presented no evidence. The trial court then entered judgments pursuant to Flor-

ida Statutes, Chapter 948, wherein it ordered that an adjudication of guilt and the imposition of sentence be stayed, and placed Appellants on probation.

For the purposes of this Appeal, Appellants admit as true the material allegations of fact alleged by the State in its information, *supra*. However, additional evidence was adduced at the trial which Appellants submit shows that the arrests and convictions herein were in clear violation of Appellants' constitutional rights.

Appellants constituted a party of Negro and white persons, and the manager of the Shell City Restaurant admitted that the reason that he refused to serve Appellants and requested them to leave the premises is that the store did not serve Negroes, and that he therefore had Appellants expelled from the restaurant by the police because of this policy of racial discrimination (R. 40). The vice-president of Shell's also testified that there are nineteen departments in the store; that Negroes are invited to participate and make purchases in eighteen of these departments; but that they are not served in the nineteenth department, namely, the restaurant (R. 50-53).

The information did not charge, nor does the record contain any allegation or evidence that Appellants were boisterous, noisy or unruly or otherwise engaged in any disorderly conduct.

HOW FEDERAL QUESTION IS PRESENTED Appellants first raised the federal question in their motion for judgment of acquittal following the presentation of the State's case at the trial, wherein Appellants contended that they were deprived of the equal protection of the laws,

due process of law, and privileges and immunities guaranteed by the Federal Constitution and the trial court ruled against Appellants on their motion (R. 61-62). Appellants again raised these questions in their Assignments of Error on Appeal from the judgments of the trial court (R. 17).

THE FEDERAL QUESTION IS SUBSTANTIAL

1. Appellants submit that the judgment below is in conflict with this Court's ruling in *Shelley* v. *Kramer*, 334 U.S. 1; 68 S. Ct. 836; 92 L.Ed. 1161 (1948), wherein a party to a racial restrictive covenant sought to enjoin the sale by one owner in a subdivision to a Negro purchaser. In refusing injunctive relief, this Court concluded that no arm of a State Government may exercise its coercive powers to effectuate racial discrimination at the behest of a private party. In the case at bar, Shell's City called upon the police of Miami to evict Appellants from the restaurant solely for the reason of racial discrimination. The police, aided by the Trial Court below, therefore effectuated this private party's racial policy by the arrests and convictions of the Appellants. In *Shelley*, this Court refused to permit a State agency to protect or effectuate a private party's property right in the form of contract, viz., the restrictive covenant. In the instant case, Appellants submit that the courts of Florida may not lend their coercive power to protect the alleged property right of Shell's City to refuse to serve or accommodate persons solely for the reasons that they are Negroes or in association with Negroes. The action of the police and the State courts, Appellants submit, amounts to State action in support of racial discrimination and therefore is a denial of the equal

protection of the laws guaranteed by the Fourteenth Amendment to the Federal Constitution.

2. Appellants submit that the judgments below are in direct conflict with the decision of the Court of Appeals for the Third Circuit in *Valle* v. *Stengle*, 176 F.2d 697 (1949). Plaintiffs there brought suit under the Civil Rights Act alleging a denial of rights guaranteed under the Fourteenth Amendment. Their complaint alleged that they were both Negroes and whites; that the defendants were the corporate owner of Palisades Amusement Park in New Jersey, the individual managers of the park and the local Chief of Police; that the park was privately and not publicly owned; that the park admitted members of the public upon payment of fees; that the park contained a pool and that persons admitted to the park were admitted to the pool upon the payment of an additional fee; that plaintiffs were admitted to the park and were in possession of duly purchased tickets; that plaintiffs were refused admission to the pool on the ground that their party contained Negroes; that the Chief of Police aided and abetted the managers and the corporate owner in refusing plaintiff's admission to the pool and aided and abetted the ejectment of plaintiffs from the park.

The District Court granted defendants' Motion to Dismiss the complaint, but was reversed on appeal. The Court of Appeals stated that the arrests were presumably pursuant to a state statute relating to minor breaches of the peace. 176 F.2d 697, 701. The Court then stated that:

> " . . . the plaintiffs were denied the equal protection of the laws within the purview of the Fourteenth Amendment because they were Ne-

groes or acting in association with Negroes when they attempted to gain admission to the pool at Palisades Park. They, or some of them, were ejected from the park, were assaulted and were imprisoned falsely, as alleged in the complaint, because they were Negroes or in association with Negroes, and were denied the right to make or enforce contracts, all within the purview of and prohibited by R. S. 1977." 176 F.2d 697, 702.

R.S. 1977 (42 U.S.C.A., § 1981) provides that:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . and proceedings for the security of persons and property as is enjoyed by white citizens".

The Court also held that there was a deprivation of the plaintiff's privileges and immunities, and stated that:

> "If a man cannot make or enforce a contract already made because of the interference of a State officer he is being denied a civil right . . . the liberty involved is in fact the liberty of contract . . . to refuse to an individual the liberty of contract is to put him beyond the pale of capitalism. Thus ostracized, he cannot engage in the acquisition of property or in the pursuit of happiness. It is clear that the Supreme Court has held that the words 'privileges and immunities' of Article IV, Section 2, protect the right of a citizen to engage in lawful commerce, trade or business without molestation or harassment

> . . . The field of human rights covered by the privileges and immunities clause is indeed a broad one. The individual defendants, acting in concert, if the allegations of the complaint are to be believed, have denied to the plaintiffs the privileges and immunities of citizenship." 176 F.2d 697, 703.

The Court added that:

> "the phrase 'to make contracts' of R.S. Section 1977 clearly shows that Congress had in mind much more than enforcing a contract, already made, by legal proceeding." 176 F.2d 697, 703.

The Court in *Valle* held that the right to solicit contracts may not be violated by State action where such action is prompted by the fact that the soliciting parties are Negroes or persons acting in association with Negroes. In the case at bar, Appellants were denied the right to engage in commerce with Shell's City and were denied such right because of the fact that they are Negroes or persons in association with Negroes. Appellants submit that these are parallel cases and the Court of Appeals for the Third District has announced a just and proper construction of the Constitution.

3. Petitioners submit that the judgments below are in conflict with the principle announced by this Court in *Marsh* v. *Alabama*, 326 U.S. 501, 90 L.Ed. 265, 66 S.Ct. 276 (1946). In *Marsh*, a member of Jehovah's Witnesses had distributed religious literature on the sidewalks of a so-called company-owned town, and had been arrested and convicted for violating a state statute prohibiting one from

entering or remaining on the premises of another after having been warned not to do so. This Court reversed the conviction as being a violation of freedom of the press and freedom of religion, and notwithstanding the fact that the acts proscribed by State law took place on privately-owned property. This Court stated that:

> "In our view the circumstance that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the enforcement of such restraint by the application of a State statute." 326 U.S. 501, 509, 90 L.Ed. 265, 270.

Likewise in the case at bar, Appellants submit that the State of Florida cannot justify the deprivation of Appellants' right to equal protection of the laws and cannot justify the enforcement of a policy of racial discrimination solely because Appellant's conduct, presence and acts occurred on private premises. In *Marsh* the Court stated that:

> "When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position." 326 U.S. 501, 539, 90 L.Ed. 265, 270

Appellants submit that their rights to the equal protection of the laws and freedom from racial discrimina-

tion occupy the same "preferred position" as the rights which this Court protected in *Marsh* v. *Alabama*, *supra*. Moreover, as Mr. Justice Douglas stated in his concurring opinion in *Garner* v. *Louisiana*, 368 U.S. 157, 82 S.Ct. 248, 7 L.Ed. 2d 207 (1961):

> "Restaurants, whether in a drug store, department store, or bus terminal, are a part of the public life of most of our communities. Though they are private enterprises, they are public facilities in which the states may not enforce a policy of racial segregation."
>
> * * *
>
> "One can close the doors of his home to anyone he desires. But one who operates an enterprise under a license from the government enjoys a privilege that derives from the people. Whether retail stores, not licensed by the municipality, stand on a different footing is not presented here. But the necessity of a license shows that the public has rights in respect to those premises. The business is not a matter of mere private concern. Those who license enterprises for public use should not have under our Constitution the power to license it for the use of only one race. For there is the overriding constitutional requirement that all state power be exercised so as not to deny equal protection to any group."

CONCLUSION

For the foregoing reasons, Appellants submit that the questions here presented are substantial and of great public importance and warrant plenary consideration by this Court.

Respectfully submitted,

TOBIAS SIMON
Counsel for Appellants
233 Southeast First Street
Miami 32, Florida

CERTIFICATE OF MAILING

I, TOBIAS SIMON, Counsel for Appellants and a member of the Bar of the Supreme Court of the United States, hereby certify that on January ....., 1963, I served copies of the foregoing Jurisdictional Statement on the Appellee, STATE OF FLORIDA, by mailing a Copy thereof in a duly addressed envelope with postage prepaid to the office of RICHARD E. GERSTEIN, State Attorney, Dade County Courthouse, Miami, Florida, and by further mailing a copy thereof to the Honorable RICHARD IRVIN, Attorney General of the State of Florida, Capitol Building, Tallahassee, Florida.

TOBIAS SIMON

Counsel for Appellants
233 Southeast First Street
Miami, Florida

APPENDIX A

OPINION OF SUPREME COURT OF FLORIDA, filed September 19, 1962 in JAMES RUSSELL ROBINSON, et al., v. THE STATE OF FLORIDA, 144 So.2d 811: THORNAL, J.

This case finally reaches us by an order of the Circuit Court of the Eleventh Judicial Circuit transferring an appeal from a judgment of the Criminal Court of Record of Dade County which passed upon the validity of a state statute.

The case traveled here by a circuitous and devious route which is not approved and which should be meticulously avoided in the future. See, Robinson v. State, Fla. 1961, 132 So.2d 3.

Robinson and others were found to be guilty of a misdemeanor in the Criminal Court of Record of Dade County. In denying a motion for a directed verdict at the conclusion of the evidence, the trial judge expressly sustained the validity of Section 509.141, Florida Statutes. The cited statute makes it a misdemeanor for a person to refuse to leave a restaurant after being requested so to do. The judgment of the criminal court was appealed to the circuit court. It should have been brought directly here under Article V, Section 4, Florida Constitution, which provides for direct appeal to this Court from final judgments of trial courts "directly passing upon the validity of a state statute." Evidently, this provision was never brought to the attention of the circuit judge. Moreover, pursuant to requirements of the Constitution this Court has adopted Florida Appellate Rule 2.1a(5)(d), which reads in part as follows:

> "When the jurisdiction of an appellate court has been improvidently invoked, that court may of its own motion or on motion of either party to the cause enter an order transferring it to the court having jurisdiction . . . "

In the instant case the circuit court sat as an appellate court. Florida Appellate Rule 1.3. It is evident that the provisions of the foregoing rule were not invoked when this matter was originally before the circuit court in the exercise of its appellate jurisdiction. At that time the case should have been transferred immediately to this Court. In fact, it never should have been taken to the circuit court in the first instance. Robinson v. State, supra. Instead of being brought here directly, as the Constitution contemplates, the appeal took a tortuous route through the circuit court, thence by petition for certiorari to the District Court of Appeal which transferred to us the petition for certiorari. Whereupon, we were compelled, State v. Robinson, supra, to transfer the matter back to the District Court which in turn remanded it to the circuit court, which finally sent the original appeal to this Court where it should have been at the beginning of the appellate process.

Were we to condone this procedure it would be an invitation to litigants to ignore completely the requirements of the Constitution governing appeals. Litigants could merely follow the course which seemed to them to be most desirable, by selecting the appellate court of their own choice with the hope of finding somewhere along the line a decision suiting their desires.

In cases of the type now before us, the circuit court

at the outset had no jurisdiction to do anything but transfer the appeal here. Instead, it proceeded to attempt to exercise complete appellate jurisdiction. Under the procedure followed in this case we would doubtless be justified in dismissing this appeal on the ground that the appellants had elected to proceed to a conclusion in the wrong forum instead of seeking the benefit of Rule 2.1a(5)(b), and thereby getting on the right track to move forward to final adjudication in the forum which had the power to proceed.

However, inasmuch as the case is now finally here, we will proceed to dispose of it because we do have jurisdiction. We have included the foregoing discussion for the guidance of the Bar in the future, in the hope that there will be no repetition of the procedure which was undertaken in the instant case.

We find it unnecessary to engage in any prolonged discussion of the merits of the case. The sole point presented is the matter of the validity vel non of Section 509.141, Florida Statutes. We have concluded, as did the trial judge, that the statute is non-discriminatory and that it reflects a valid exercise of the legislative power of the State of Florida. Having so concluded, we find no reason to disturb the judgment of the Criminal Court of Record here under assault.

It is, therefore, affirmed.

It is so ordered.

ROBERTS, C. J., DREW, O'CONNELL and HOBSON (Ret.), JJ., concur

APPENDIX B

FLORIDA STATUTES, SECTION 509.141:

(1) The manager, assistant manager, desk clerk or other person in charge or in authority in any hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall have the right to remove, cause to be removed, or eject from such hotel or apartment house, tourist camp, motor court, restaurant, rooming house or trailer court in the manner hereinafter provided, any guest of said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, who, while in said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises is intoxicated, immoral, profane, lewd, brawling, or who shall indulge in any language or conduct either such as to disturb the peace and comfort of other guests of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court or such as to injure the reputation or dignity or standing of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, or who, in the opinion of the management, is a person whom it would be detrimental to such hotel, apartment house, tourist camp, motor court, restaurant, rooming house, or trailer court for it any longer to entertain.

(2) The manager, assistant manager, desk clerk or other person in charge or in authority in such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall first orally notify such guest that the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court no longer

desires to entertain him or her and request that such guest immediately depart from the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court. If such guest has paid in advance the hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court shall, at the time oral or written request to depart is made, tender to said guest the unused or unconsumed portion of any such advance payment. Said hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court may, if its management so desires, deliver to such guest written notice in form as follows:

> "You are hereby notified that this establishment no longer desires to entertain you as its guest and you are requested to leave at once and to remain after receipt of this notice is a misdemeanor under the laws of this state."

(3) And any guest who shall remain or attempt to remain in such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court after being requested, as aforesaid, to depart therefrom, shall be guilty of a misdemeanor, and shall be deemed to be illegally upon such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises.

(4) In case any such guest, or former guest, of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, or any other person, shall be illegally upon any hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises, the management, or any employee

of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, may call to its assistance any policeman, constable, deputy sheriff, sheriff or other law enforcement officer of this state, and it shall be the duty of each member of the aforesaid classes of officers, upon request of such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court management, or hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court employee, forthwith and forceably, if necessary, to immediately eject from such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court, any such guest, or former guest, or other person, illegally upon such hotel, apartment house, tourist camp, motor court, restaurant, rooming house or trailer court premises, as aforesaid.

rec'd 2/15

For your information. CORE has been partly responsible for this, you know
Al Brown

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

LILLIAN S. BLACKWELL
R. F. D. 2, Box 77
Vienna, Virginia

FREDDIE LEE HARRISON
1834 N. Cameron Street
Arlington, Virginia

on behalf of themselves and others similarly situated

PLAINTIFFS,

v.

ALBERTIS S. HARRISON, JR.
Governor of the
Commonwealth of Virginia
Richmond, Virginia

ROBERT Y. BUTTON
Attorney General of the
Commonwealth of Virginia
Richmond, Virginia

WILLIAM J. HASSAN
Commonwealth's Attorney for
Arlington County, Virginia
Arlington, Virginia

ROBERT C. FITZGERALD
Commonwealth's Attorney for
Fairfax County, Virginia
Fairfax, Virginia

MAJOR WILLIAM G. FAWVER
Chief of Police for
Arlington County, Virginia
Arlington, Virginia

MAJOR WILLIAM L. DURRER
Chief of Police for
Fairfax County, Virginia
Fairfax, Virginia

NEIGHBORHOOD THEATRE, Inc.
1013-A East Main Street
Richmond 6, Virginia

JEFFERSON CORPORATION OF VIRGINIA
1013-A East Main Street
Richmond 6, Virginia

LEE AMUSEMENT CORPORATION
1013-A East Main Street
Richmond 6, Virginia

DEFENDANTS.

CIVIL ACTION NO. 2873

Filed: FEBRUARY 11, 1963

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

1. Jurisdiction of this Court is invoked under the Fourteenth Amendment to the United States Constitution, Title 42, United States Code, §§ 1981 and 1983, and Title 28, United States Code §§ 1343(3) and 2201.

2. Plaintiffs, by this suit, seek to have declared unconstitutional, and to enjoin the enforcement of, certain statutes of the Commonwealth of Virginia requiring racial segregation in places of public assemblage, to wit: §§ 18.1-356 and 18.1-357, Code of Virginia of 1950, as amended (formerly §§ 18-327 and 18-328, Code of 1950), copies of which are annexed hereto as Exhibit A.

3. Plaintiffs are members of the Negro race, citizens of the United States and residents of Virginia, and bring this action in their own right and on behalf of others similarly situated.

4. The defendants, except Neighborhood Theatre, Incorporated (hereinafter called Neighborhood Theatre), Jefferson Corporation of Virginia and Lee Amusement Corporation, are duly elected or appointed governmental officials, holding office or position in the Commonwealth of Virginia, who, in the exercise of governmental authority, are charged with adherence to, and enforcement and execution of, the laws of that State.

5. Defendant Neighborhood Theatre is a Virginia corporation engaged, under the business name of The Neighborhood Group of Motion Picture Theatres, in the general management of subsidiary corporations which own and operate motion picture theatres, including theatres located, inter alia, in Arlington and Fairfax counties, and the cities of Alexandria and Falls Church, Virginia.

6. Defendant Jefferson Corporation of Virginia is a Virginia corporation owned by Neighborhood Theatre; Jefferson Corporation of Virginia owns and operates the Jefferson Theatre, 600 Arlington Boulevard, Falls Church (Fairfax County), Virginia.

7. Defendant Lee Amusement Corporation is a Virginia corporation owned by Neighborhood Theatre; Lee Amusement Corporation owns and operates the Glebe Theatre, 2130 North Glebe Road, Arlington, Virginia.

8. On November 4, 1962, at about 5:00 p. m., the plaintiffs presented themselves at the ticket window of the aforesaid Jefferson Theatre and asked the ticket seller to sell them tickets so that they could enter the theatre and view the motion picture then being exhibited. Plaintiffs' behavior was at all times orderly and peaceful. The theatre was then open for business, and other persons purchased admission tickets both before and after plaintiffs made their request. The theatre's ticket seller, acting within the scope of her authority, refused to sell tickets to plaintiffs and excluded them from the theatre. The plaintiffs appealed to the manager of the theatre, who also declined to sell them tickets and to admit them to the theatre. These refusals to admit the plaintiffs to the theatre were solely by reason of plaintiffs' race or color.

9. On November 4, 1962, at or about 6:00 p. m. the plaintiffs presented themselves at the ticket window of the aforesaid Glebe Theatre, and asked the ticket seller to sell them tickets so that they could enter the theatre and view the motion picture then being exhibited. Plaintiffs' behavior was at all times orderly and peaceful. The theatre was then open for business and other persons purchased tickets both before and after plaintiffs made their request. The theatre's ticket seller, acting within the scope of her authority, refused to sell tickets to plaintiffs and excluded them from the theatre. The plaintiffs appealed to the manager of the theatre, who also declined to sell them tickets and to admit them to the theatre. The refusals to admit the plaintiffs to the theatre were solely by reason of plaintiffs' race or color.

10. Defendant Neighborhood Theatre, acting through its agents, servants, employees and subsidiary corporations, including the defendants Jefferson Corporation of Virginia and Lee Amusement Corporation, has adopted and presently maintains at its theatres in Arlington and Fairfax counties and the cities of Alexandria and Falls Church, Virginia, a policy or practice of denying admission and use of its facilities to members of the Negro race. Said defendant, acting through its agents, servants and employees, in response to communications from persons asking for the admission of Negroes, without discrimination, to theatres in northern Virginia owned and managed by it, has on numerous occasions stated that it is not practical to do so because it is necessary to operate the theatres in accordance with the laws of Virginia, citing §§ 18.1-356 and 18.1-357, Code of Virginia. Exhibits B, C, D and E, annexed hereto, are copies of such letters signed by Morton G. Thalhimer, Jr., Vice President of defendant Neighborhood Theatre.

11. Sections 18.1-356 and 18.1-357, Code of Virginia, in effect, require operators of motion picture theatres (among other places of public assemblage) which are open to white persons, to exclude all Negroes unless special facilities are provided to segregate them from the rest of the public. Because these provisions of the Code of Virginia require the exclusion or segregation of persons in such places solely because of their race or color they are unconstitutional on their face and void under the Fourteenth Amendment to the Constitution of the United States.

12. Defendants Hassan and Fitzgerald, the Commonwealth's Attorneys for Arlington and Fairfax counties respectively, have both stated recently in response to inquiries addressed to them that they consider §§ 18.1-356 and 18.1-357 to be enforceable provisions of the

Code of Virginia, and that in the event violations are properly charged, said defendants in their official capacities will prosecute to the extent warranged by the evidence. Exhibits F, G, H and I, annexed hereto, are copies of recent exchanges of correspondence with defendants Hassan and Fitzgerald in which said defendants have stated their intention of prosecuting appropriate cases brought under §§ 18.1-356 and 18.1-357, Code of Virginia.

13. In recent years, and as late as 1957, in the area of northern Virginia where theatres owned and managed by defendant Neighborhood Theatre are located, there have been police arrests and criminal prosecutions to enforce §§ 18.1-356 and 18.1-357, Code of Virginia.

14. The existence of Virginia Code §§ 18.1-356 and 18.1-357 as laws of the State of Virginia by itself and in conjunction with the adherence to and the likelihood of enforcement and execution of said provisions by the defendant officials is a significant factor in the decision of Neighborhood Theatre to maintain a policy and practice of denying admission to Negroes.

15. The existence of Virginia Code §§ 18.1-356 and 18.1-357 as laws of the State of Virginia by itself and in conjunction with the adherence to and the likelihood of enforcement and execution of said provisions by the defendant officials, acting both individually and in concert, have deprived and are depriving plaintiffs and others similarly situated of their rights under the Fourteenth Amendment to the Constitution of the United States.

16. Defendants Neighborhood Theatre, Jefferson Corporation of Virginia and Lee Amusement Corporation, by maintaining their policy and practice of discrimination against plaintiffs and other members of the Negro race under color of, and compulsion from, §§ 18.1-356 and 18.1-357, Code of Virginia, have deprived and are depriving plaintiffs

and others similarly situated of their rights under the Fourteenth Amendment to the Constitution of the United States.

17. Defendants Neighborhood Theatre, Jefferson Corporation of Virginia and Lee Amusement Corporation, by maintaining their policy and practice of discrimination against plaintiffs and other members of the Negro race under color of, and compulsion from, §§ 18.1-356 and 18.1-357, Code of Virginia, and as a result of the acts of the other defendants herein described above in paragraphs 11, 12, 14 and 15, have deprived and are depriving plaintiffs and others similarly situated of their rights under the Fourteenth Amendment to the Constitution of the United States.

18. The damage and injury done to plaintiffs by reason of their being deprived of the foregoing rights is continuing and irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

A. Adjudge and declare §§ 18.1-356 and 18.1-357, Code of Virginia of 1950, as amended, to be in violation of the Constitution of the United States, and therefore void.

B. Issue an injunction, permanently and pendente lite restraining and preventing defendants, their agents, servants, employees, and subsidiary corporations and all other persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from depriving plaintiffs or any other individuals similarly situated of their federal constitutional rights by means of obedience to, adherence to, or enforcement or execution of, §§ 18.1-356 and 18.1-357, Code of Virginia of 1950, as amended.

C. Grant such other and further relief as to the Court may seem just and proper.

/s/ Noel Hemmendinger

Noel Hemmendinger
Suite 705, 1000 Connecticut Avenue
Washington 6, D. C.

/s/ Allison W. Brown, Jr.

Allison W. Brown, Jr.
c/o Suite 705, 1000 Connecticut Avenue
Washington 6, D. C.

/s/ Otto L. Tucker

Otto L. Tucker
901 Princess Street
Alexandria, Virginia

ATTORNEYS FOR PLAINTIFFS

City of Washington,)
District of Columbia) ss.

Lillian S. Blackwell, being duly sworn, deposes and says she resides at R. F. D. 2, Box 77, Vienna, Virginia; that she has read the foregoing complaint and knows the contents thereof and that the same are true of her own knowledge except as to the matters therein imparted to her by others, and as to those matters she believes them to be true.

/s/ Lillian S. Blackwell
Lillian S. Blackwell

Subscribed and sworn to
before me this 29th day
of January 1963.

Evelyne M. Newton
Notary Public

City of Washington,)
District of Columbia) ss.

Freddie Lee Harrison, being duly sworn, deposes and says she resides at 1834 N. Cameron Street, Arlington, Virginia; that she has read the foregoing complaint and knows the contents thereof and that the same are true of her own knowledge except as to the matters therein imparted to her by others, and as to those matters she believes them to be true.

/s/ Freddie Lee Harrison
Freddie Lee Harrison

Subscribed and sworn to
before me this 29th day
of January, 1963.

Evelyne M. Newton
Notary Public

Exhibit A

Code of Virginia of 1950, as Amended
(1961 Replacement Volume)

ARTICLE 6

Segregation of Races

§18.1-356. Duty to separate races at public assemblages.-- Every person, firm, institution or corporation operating, maintaining, keeping, conducting, sponsoring or permitting any public hall, theatre, opera house, motion picture show or any place of public entertainment or public assemblage which is attended by both white and colored persons shall separate the white race and the colored race and shall set apart and designate in each such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage certain seats therein to be occupied by white persons and a portion thereof, or certain seats therein, to be occupied by colored persons and any such person, firm, institution or corporation that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. (Code 1950, §18-327; 1960, c. 358.)

§18.1-357. Failure to take space assigned in pursuance of preceding section.-- Any person who fails, while in any public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage to take and occupy the seat or other space assigned to them in pursuance of the provisions of the preceding section by the manager, usher or other person in charge of such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage or whose duty is to take up tickets or collect the admission from the guests therein, or who shall fail to obey thr request of such manager, usher or other person, as aforesaid, to change his seat from time to time as occasion requires, in order that the preceding section may be complied with, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than twenty-five dollars for each offense. Furthermore such person may be ejected from such public hall, theatre, opera house, motion picture show or other place of public entertainment or public assemblage by any manager, usher or ticket taker, or other person in charge of such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage, or by a police officer or any other conservator of the peace, and if such person ejected shall have paid admission into such public hall, theatre, opera house, motion picture show or other place of public entertainment or public assemblage, he shall not be entitled to a return of any part of the same. (Code 1950, §18-328; 1960, c.358.)

EXHIBIT B

GENERAL OFFICES

THE NEIGHBORHOOD GROUP MOTION PICTURE THEATRES

TELEPHONE DIAL 643-0118
AREA CODE 703

1013-A EAST MAIN STREET

P. O. BOX 3J
RICHMOND 6, VIRGINIA

December 10, 1962

Mrs. A. J. E. Davis, Chairman
Christian Social Relations Committee
Arlington Council of United Church Women
4853 Rock Spring Road
Arlington 7, Virginia

Dear Mrs. Davis:

This will acknowledge your letter of December 7, 1962.

From our point of view, it is not practical for us to do what you have suggested in your letter. I am sure you realize that it is necessary for us to operate our theatres in accordance with the laws of the State of Virginia.

For your information, I am enclosing a copy of two sections of the Law of the Commonwealth of Virginia.

Sincerely,

Morton Thalhimer Jr

Morton Thalhimer, Jr.

MT, Jr:h

Enclosure

cc: Mrs. Sherman E. Johnson, President
Arlington Council of United Church Women
118 North Jackson Street
Arlington 1, Virginia

THE SEVERAL THEATRES OF THE NEIGHBORHOOD GROUP ARE OPERATED BY SEPARATE CORPORATIONS AND THIS LETTER IS WRITTEN ON BEHALF OF THE CORPORATION WHICH OPERATES THE THEATRE INVOLVED.

ARTICLE 8

Segregation of Races.

SS 18-327. Duty to separate races at public assemblage. -- Every person, firm, institution or corporation operating, maintaining, keeping, conducting, sponsoring or permitting any public hall, theatre, opera house, motion picture show or any place of public entertainment or public assemblage which is attended by both white and colored persons shall separate the white race and the colored race and shall set apart and designate in each such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage certain seats therein to be occupied by white persons and a portion thereof, or certain seats therein, to be occupied by colored persons and any such person, firm, institution or corporation that shall fail, refuse or neglect to comply with the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.

SS 18-328. Failure to take space assigned in pursuance of preceding section. --Any person who fails, while in any public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage to take and occupy the seat or other space assigned to them in pursuance of the provisions of the preceding section by the manager, usher or other person in charge of such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage or whose duty is to take up tickets or collect the admission from the guests therein, or who shall fail to obey the request of such manager, usher or other person, as aforesaid, to change his seat from time to time as occasion requires, in order that the preceding section may be complied with, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than ten dollars nor more than twenty-five dollars for each offense. Furthermore such person may be ejected from such public hall, theatre, opera house, motion picture show or other place of public entertainment or public assemblage by any manager, usher or ticket taker, or other person in charge of such public hall, theatre, opera house, motion picture show or place of public entertainment or public assemblage, or by a police officer or any other conservator of the peace, and if such person ejected shall have paid admission into such public hall, theatre, opera house, motion picture show or other place of public entertainment or public assemblage, he shall not be entitled to a return of any part of the same.

EXHIBIT C

GENERAL OFFICES

THE NEIGHBORHOOD GROUP OF MOTION PICTURE THEATRES

TELEPHONE DIAL 643-0118
AREA CODE 703

1013-A EAST MAIN STREET

P. O. BOX 3J
RICHMOND 6, VIRGINIA

July 24, 1962

The Rev. Chester H. Murray
1315 South Queen Street
Arlington 4, Virginia

Dear Rev. Murray:

This will acknowledge your letter of July 19, 1962.

From our point of view, it is not practical for us to do what you have suggested in your letter. I am sure you realize that it is necessary for us to operate our theatres in accordance with the laws of the State of Virginia.

For your information, I am enclosing a copy of two sections of the Law of the Commonwealth of Virginia.

Sincerely,

Morton Thalhimer, Jr.

Morton Thalhimer, Jr.

MT, Jr:h

Enclosure

THE SEVERAL THEATRES OF THE NEIGHBORHOOD GROUP ARE OPERATED BY SEPARATE CORPORATIONS AND THIS LETTER IS WRITTEN ON BEHALF OF THE CORPORATION WHICH OPERATES THE THEATRE INVOLVED.

Attachment to Exhibit C

THE ENCLOSURE TO THIS LETTER

IS IDENTICAL WI TH THE ATTACHMENT

TO EXHIBIT B.

EXHIBIT D

GENERAL OFFICES

THE NEIGHBORHOOD GROUP of MOTION PICTURE THEATRES

TELEPHONE DIAL 643-0118
AREA CODE 703

1013-A EAST MAIN STREET

P.O.BOX 3.1
RICHMOND 6, VIRGINIA

July 30, 1962

Mr. Allison W. Brown, Jr.
300 Beechwood Road
Alexandria, Virginia

Dear Mr. Brown:

This will acknowledge your letter of July 26, 1962.

From our point of view, it is not practical fr us to do what you have suggested in your letter. I am sure you realize that it is necessary for us to operate our theatres in accordance with the laws of the State of Virginia.

For your information, I am enclosing a copy of two sections of the Law of the Commonwealth of Virginia.

Sincerely,

Morton Thalhimer, Jr.

MT,Jr:h

Enclosure

THE SEVERAL THEATRES OF THE NEIGHBORHOOD GROUP ARE OPERATED BY SEPARATE CORPORATIONS AND THIS LETTER IS WRITTEN ON BEHALF OF THE CORPORATION WHICH OPERATES THE THEATRE INVOLVED.

Attachment to Exhibit D

THE ENCLOSURE TO THIS LETTER

IS IDENTICAL WITH THE ATTACHMENT

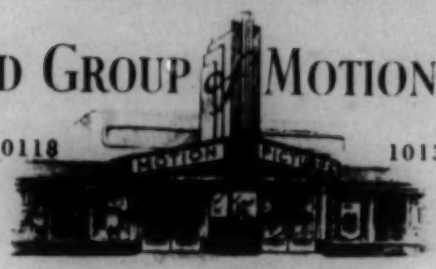
TO EXHIBIT B.

EXHIBIT E

GENERAL OFFICES

THE NEIGHBORHOOD GROUP OF MOTION PICTURE THEATRES

TELEPHONE DIAL 643-0118
AREA CODE 703



1013-A EAST MAIN STREET

P. O. BOX 3J
RICHMOND 6, VIRGINIA

July 18, 1962

Mr. Carl E. Auvil
1113 Nicholson Road
Falls Church, Virginia

Dear Mr. Auvil:

This will acknowledge your letter of July 11, 1962.

From our point of view, it is not practical for us to do what you have suggested in your letter. I am sure you realize that it is necessary for us to operate our theatres in accordance with the laws of the State of Virginia.

For your information, I am enclosing a copy of two sections of the Law of the Commonwealth of Virginia.

Sincerely,

Morton Thalhimer Jr.

Morton Thalhimer, Jr.

MT,Jr:h

Enclosure

THE SEVERAL THEATRES OF THE NEIGHBORHOOD GROUP ARE OPERATED BY SEPARATE CORPORATIONS AND THIS LETTER IS WRITTEN ON BEHALF OF THE CORPORATION WHICH OPERATES THE THEATRE INVOLVED.

Attachment to Exhibit E

THE ENCLOSURE TO THIS LETTER

IS IDENTICAL WITH THE ATTACHMENT

TO EXHIBIT B.

EXHIBIT F

COPY

4831 N. Old Dominion Drive
Arlington, Virginia

October 1, 1962

William J. Hassan, Esq.
Commonwealth Attorney, Arlington County
Courts Building
1401 N. Uhle St.
Arlington, Va.

re: Virginia law on segregated
seating of the races
Section 18-327
18-328

Dear Mr. Hassan:

As you know, for several months there has been an organized campaign in progress in Northern Virginia to obtain admission of Negro citizens to motion picture theatres in Arlington. The various groups interested in civil rights questions which have been engaged in this effort have had a number of discussions with the managements of the theatres concerning their policies of excluding Negroes. Invariably these managements give as one of their reasons for not admitting all citizens on an equal basis the fact that they must comply with the Virginia segregated seating law (Sections 18-327 and 18-328, Code of Virginia). Since these theatres do not have the segregated facilities required by this law, it serves, of course, as an indirect obstacle to the admission of Negroes to nearly every theatre in the area.

Since the Arlington Council on Human Relations is interested in seeing this matter peaceably resolved and in having Negroes admitted to all theatres in the area, we would be interested in having your views on the law. Specifically, we would like to know whether, if you received a complaint, you would prosecute alleged violations of either of these sections of the Virginia Code.

Very truly yours,

/s/

Stuart Broad, President
Arlington Council on Human Relations
4831 N. Old Dominion Drive
Arlington, Virginia

cc: Chairman, County Board
County Manager

EXHIBIT G

OFFICE OF THE
ATTORNEY FOR THE COMMONWEALTH
COURT HOUSE
ARLINGTON 1, VIRGINIA

WILLIAM J. HASSAN
JAMES J. CAMPBELL
GEORGE C. COLLIER
PETER J. KOSTIK
JOHN L. MELNICK
ROBERT C. WATSON

JACKSON 7-4800

October 3rd, 1962

Mr. Stuart Broad, President
Arlington Council on Human Relations
4831 N. Old Dominion Drive
Arlington, Virginia

Dear Mr. Broad:

Reference is made to your letter dated October 1st concerning Title 18, Sections 327 and 328. These Sections are now Sections 18.1-356 and 18.1-357. Sec. 18.1-356 in substance provides that every person maintaining a public hall, theater, opera house, etc. which is attended by both white and colored persons, shall separate the races and designate certain seats therein to be occupied by each race, and upon failure so to do shall be guilty of a misdemeanor. Sec. 18.1-357 substantially provides that any person who fails to take and occupy the space assigned to them pursuant to the provisions of Sec. 18.1-356, shall be guilty of a misdemeanor.

Under Sec. 18.1-356, there must be attendance by both white and colored persons at the hall, theater, etc., before a duty arises upon the person operating the same to set apart and designate certain seats for each of the races. To the best of my present information, neither of these sections have been declared invalid by the Supreme Court of Appeals of Virginia. Until such event occurs, they are the law of Virginia.

Warrants for violations of Title 18 are issued by duly designated Special Justices of the Violations Bureau or Judges of the County Court or Judges of the Circuit Court. In the event a warrant were issued by one of these Judges, this office would prosecute, provided there is evidence of probative value to substantiate the elements essential for the prosecution of the crime charged.

Your question was: "Specifically, we would like to know whether, if you received a complaint, you would prosecute alleged violations of either of these sections of the Virginia Code." I do not issue warrants and prosecutions are not instigated in Virginia on the basis of a complaint to the prosecuting attorney. The person who made the complaint would be advised to obtain a warrant from one of the Special Justices or Judges and after the warrant had been sworn to by the complainant and issued by the Justice or Judge, this office would prosecute, provided there is evidence of probative value to substantiate the elements essential for the prosecution of the crime charged.

Very truly yours,

William J. Hassan
Attorney for the Commonwealth

WJH:aj
cc: Chairman, County Board
County Manager

EXHIBIT H

C O P Y

October 1, 1962

Mr. Robert C. Fitzgerald
Commonwealth Attorney
Fairfax County
Fairfax, Virginia

Dear Mr. Fitzgerald:

As you know, for several months there has been an organized campaign in progress in Northern Virginia to obtain the admission of Negroes to motion picture theatres in this area.

The various groups interested in civil rights questions which have been engaged in this effort have had a number of discussions with the managements of the theatres concerning their exclusionary policies. Invariably these managements give as one of their reasons for not admitting Negroes, the fact that they must comply with Virginia's segregated seating law (Sections 18-327 and 18-328, Code of Virginia). Since the theatres do not have the segregated facilities required by law, this serves, of course, as an indirect obstacle to the admission of Negroes to virtually every theatre in the area.

Since this Council is interested in seeing this matter resolved, and in having Negroes admitted to all theatres in the area, we are interested in ascertaining your views on the law. Specifically, we would like to know whether, if you received a complaint, you would prosecute alleged violations of either of these sections of the Code.

I would appreciate it if you would send your reply to my home address:

1511 Cavalier Corridor
Falls Church

Very truly yours,

/s/

Jacob Seidenberg
President

cc: Carleton C. Massey
William A. Moss

EXHIBIT I

OFFICE OF THE
ATTORNEY FOR THE COMMONWEALTH
FOR FAIRFAX COUNTY
FAIRFAX, VIRGINIA

ROBERT C. FITZGERALD

A. ALBERT BALAVAGE, JR.
THOMAS O. LAWSON
QUIN S. ELSON
DONALD C. CROUNSE
MYRON C. SMITH

October 5, 1962

Mr. Jacob Seidenberg, President
Fairfax County Council on Human Relations
1511 Cavalier Corridor
Falls Church, Virginia

Dear Mr. Seidenberg:

I believe the same question contained in your letter of October 1, 1962 was answered in a letter to Mr. Noel Hemmendinger of your organization on September 19, 1961. Please be advised that this office has no authority to change any law or ignore any violation. To do so would violate the oath of this office. Therefore, if any warrant is obtained which properly charges an offense upon the facts of any case, this office must represent the Commonwealth or the County in court. Even if we did not do so the case would still come before the court since this office has no control over the application for or issuance of warrants and because such warrants are returned to the court and called upon their return date and do not come through this office.

Very truly yours,

Robert C. Fitzgerald
Commonwealth's Attorney

RCF:ga

CORE

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff v. CITY OF GREENWOOD, A Municipal Corporation, et al, Defendants.	CIVIL ACTION NO. TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

It appearing from the verified complaint of the United States and from the application of the United States for a temporary restraining order and the affidavits attached thereto, that of the defendants, Charles E. Sampson is Mayor, Buff A. Hammond is Fire and Police Commissioner, and Curtis Lary is Chief of Police and Gray Evans is City Attorney of the City of Greenwood; that John J. Frazier, Jr. is County Attorney and Wilbur Smith is a deputy Sheriff of Leflore County; that during the past ten years fewer than 3% of the Negro residents of Leflore County of voting age have been and are registered to vote; that since the summer of 1962 and continuing to the present time, an organization known as the

Student Non-Violent Coordinating Committee and its representatives have been and are encouraging and assisting Negro residents of Leflore County to register to vote; that the City of Greenwood, Charles E. Sampson, as Mayor of the City, Buff A. Hammond as Fire and Police Commissioner of the City, Curtis Lary as Chief of Police of the City, Gray Evans as City Attorney of the City of Greenwood, Leflore County, John J. Frazier as County Attorney of Leflore County and Wilbur Smith as Deputy Sheriff of Leflore County have intimidated, threatened and coerced and are intimidating, threatening, and coercing the representatives of the Student Non-Violent Coordinating Committee by means of arresting, detaining, and prosecuting such representatives for the purpose of hindering and preventing the efforts of such representatives in encouraging and assisting Negro residents of Leflore County to register to vote; that said defendants have similarly intimidated, threatened and coerced and are intimidating, threatening and coercing Negro citizens of Leflore County, by reason of their race and color, from freely applying to register to vote for candidates for state, federal and local office; and that such acts of intimidation, threats and coercion will continue and thereby cause irreparable injury unless restrained by order of this Court prior to the time that notice can be served and a hearing had upon plaintiff's motion for a preliminary injunction, and

The Court being of the opinion that this is a proper case for the issuance of a temporary restraining order and the issuance of an order requiring the defendants to show

cause why such restraining order should not be continued until a hearing may be had upon the motion for a preliminary injunction, now therefore,

IT IS ORDERED that the City of Greenwood, Charles E. Sampson, Buff A. Hammond, Curtis Lary, Gray Evans, Leflore County, John J. Frazier, Jr., and Wilbur Smith, together with their officers, agents, employees, representatives, successors in office, and all those in active concert and participation with them, be and they hereby are temporarily restrained from:

(1) Arresting, detaining, prosecuting, imprisoning, or injuring, through the use of police dogs or otherwise, or attempting or threatening to arrest, detain, prosecute, imprison or so injure any person for the purpose of hindering or preventing that person or any other person from registering to vote in Leflore County, Mississippi for candidates for federal office or for the purpose of hindering, preventing or discouraging any person from assisting or advising any other person to so register;

(2) Denying to any person, by arrest, prosecution or otherwise, the right peaceably to speak or to assemble in protest against denials of the right to vote or to register to vote or denials of protection in the exercise of the right to vote or to become registered to vote;

(3) Hindering or preventing any person by reason of his race or color from applying for registration to vote in Leflore County, or

(4) Taking any steps with respect to the prosecution or service of sentence of Lawrence Guyot, Lafayette Surney,

Robert Moses, James Foreman, James Wilson Jones, Willie Peacock or Charles McLauran, upon the charges of disorderly conduct tending to provoke a breach of the peace, or on conviction of such charges filed in the courts of the City of Greenwood, Mississippi on March 27, 1963, or failing to release forthwith each of the aforementioned persons on his own recognizance pending further proceedings in this Court.

IT IS FURTHER ORDERED that the City of Greenwood, Charles E. Sampson, Buff A. Hammond, Curtis Lary, Gray Evans, Leflore County, John J. Frazier, Jr., and Wilbur Smith appear before this Court in the United States Post Office and Courthouse in Greenville, Mississippi on April , 1963 at .m. to show cause, if any they have, why this order should not be continued in effect until a hearing can be had upon the motion for preliminary injunction.

IT IS FURTHER ORDERED that a copy of this order to show cause and temporary restraining order, and a copy of the complaint be served by the United States Marshal of this District on the defendants forthwith.

Done and signed this _____ day of _____, 1963, at _____ o'clock.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF GREENWOOD, a municipal corporation; CHARLES E. SAMPSON, Mayor of the City of Greenwood; BUFF A. HAMMOND, Fire and Police Commissioner of the City of Greenwood; CURTIS LARY, Chief of Police of the City of Greenwood; GRAY EVANS, City Prosecutor of the City of Greenwood; LEFLORE COUNTY; WILBUR SMITH, Deputy Sheriff of Leflore County; and JOHN J. FRAISER, Jr., County Attorney of Leflore County; Defendants.	CIVIL ACTION NO._____ COMPLAINT

Plaintiff, United States of America, alleges that:

1. This action is brought under 42 U.S.C. 1971(a), (b), and (c).

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1971(d) and pursuant to 28 U.S.C. 1345.

3. The City of Greenwood is a municipal corporation organized and existing under the laws of the State of Mississippi. It is located within and is the County Seat of Leflore County, Mississippi.

4. Charles E. Sampson is Mayor of the City of

Greenwood and, as such, is the chief administrative officer of the city. He resides in Greenwood.

5. Buff A. Hammond is Fire and Police Commissioner of the City of Greenwood and, as such, has general supervision and control of the Greenwood Police Department. He resides in Greenwood.

6. Curtis Lary is Chief of Police of the City of Greenwood and, as such, is the chief law enforcement officer of the city and has direction and command of the officers of the Greenwood Police Department. He resides in Leflore County.

7. Gray Evans is the City Prosecutor of the City of Greenwood and, as such, is authorized to prosecute in the city court violations of the laws of Mississippi occurring within the City of Greenwood. He resides in Greenwood.

8. Leflore County is a political and geographic subdivision of the State of Mississippi. Its principal offices are located in the City of Greenwood.

9. John J. Fraiser, Jr., is County Attorney of Leflore County and, as such, is legal adviser to the County and is authorized to prosecute violations of the laws of Mississippi occurring within the County. He resides in Leflore County.

10. Wilbur Smith is a deputy sheriff of Leflore County and, as such, is authorized to enforce the laws of Mississippi within Leflore County. He resides in Leflore County.

11. Under Mississippi law, registration for voting is a prerequisite for voting in any election, including voting for any candidate for the office of President, Vice President, Presidential elector, Member of the Senate,

and Member of the House of Representatives of the United States.

12. There are approximately 10,274 white persons and 13,567 Negroes of voting age residing in Leflore County. Of these, approximately 9,800 white persons and 250 Negroes are registered to vote. At all times during the ten-year period preceding the filing of this complaint the number of Negroes registered to vote in Leflore County has been less than three per cent of the total number of Negroes of voting age residing within the County. Throughout this same period the number of white persons registered to vote has remained at approximately ninety-five per cent of the number of white persons of voting age in the County.

13. During the period from January 1955 through June 1962, a total of 40 Negroes applied for registration as voters in Leflore County. Of these, 17 were accepted for registration, and 23 were rejected. During this same period a total of approximately 1664 white persons applied for registration as voters in Leflore County. Of these white applicants, approximately 1634 were registered and 30 were rejected.

14. Prior to about the middle of summer, 1962, there was no organized effort to encourage Negroes in Leflore County to register to vote. At about that time, representatives of an organization known as the Student Nonviolent Coordinating Committee came to Leflore County for the purpose of encouraging Negro citizens of the county to register to vote. In furtherance of this purpose, the representatives of the Student Nonviolent Coordinating Committee (hereafter referred to as "registration workers") opened an office in Greenwood,

distributed literature, held meetings, enlisted volunteer registration workers, instructed local Negroes regarding procedures followed in registering to vote, and encouraged and assisted local Negroes in going to the Leflore County Courthouse in Greenwood to register as voters.

15. As a result of the interest generated in voter registration by the activities of the Negro registration workers, 23 Negroes applied to register in August and September 1962. All but two of these Negroes were rejected.

16. The activities of the registration workers and the fact that Negroes were applying for registration, as described in the preceding paragraphs, were and are a matter of general common knowledge throughout Leflore County and were known to the defendants. These activities have evoked vigorous and outspoken opposition by certain white residents of the county. This opposition has been of both a violent and a public nature. Statements in the public press have condemned the activities of the Student Nonviolent Coordinating Committee. This activity by the white community had the effect of deterring Negroes from applying to register to vote, and from October 1, 1962, to February 25, 1963, only 7 Negroes applied for registration. All were rejected.

17. Beginning in February 1963, the registration workers, believing that there was a longstanding custom and practice in Leflore County not to require white persons to meet the literacy qualification for registration as was purportedly required by Mississippi law and that such literacy and understanding requirements were unconstitutional

under the Federal Constitution because of unequal and inferior educational opportunities which had been afforded to Negroes during the school age years of a substantial number of adult Negro citizens in Leflore County, began to encourage all Negro citizens of Leflore County, regardless of their literacy level, to go to the courthouse to attempt to register to vote. One of the results of this encouragement of Negroes to apply for registration was that the number of Negroes who attempted to register to vote increased substantially.

18. During the last month rifles and shotguns have been fired at some of the registration workers, and on March 24, 1963, the interior of the office of the registration workers was burned. Following the first of these shootings on February 28, 1963, a number of organizations active in voter registration of unregistered Negroes announced an accelerated voter registration campaign in Leflore County. Thereafter additional voter registration workers came to Leflore County to instruct and encourage unregistered Negroes to register to vote. As a result of all of this activity, 137 Negroes applied to register between February 26 and March 14, with as many as 33 Negroes applying in one day. This increased rate of applications by Negroes has continued down to the date of the filing of this Complaint.

19. During the night of March 26, 1963, a shot was fired into the home of a Negro citizen of Greenwood. On the morning of March 27, 1963, a group of Negroes, including Negro citizens from Leflore County and Negro registration workers from places other than Leflore County, met at a Negro church in Greenwood. This group decided at that time to proceed to the City Hall in Greenwood for the purpose of protesting the shooting and to request police protection for the Negro registration workers and all Negro citizens of Greenwood. Pursuant to this decision, between 50 and 100 Negroes proceeded on foot to the City Hall in the City of Greenwood in an

orderly, peaceful manner; they carried no weapons, they carried no signs or placards, they were not noisy or boisterous, they did not obstruct the free flow of traffic, they were not abusive. When they arrived at the City Hall, defendants Curtis Lary and Buff A. Hammond, and a number of officers of the Greenwood Police Department met them outside of the City Hall and turned them away by threatening them with arrest and with violence from a police dog. At the time the Negroes were turned away, one of the officers of the Greenwood Police Department told the man who was handling the police dog to start breaking up the crowd; thereupon the police dog began to bite at the heels and shoes of the Negroes who were at the front of the group. After one Negro had had his pants ripped by the dog, the Negroes turned around and started to go to the Courthouse in the City of Greenwood, which was about four blocks away. After the group had proceeded a short way toward the Courthouse, one of the Negro registration workers advised the police that they were going to the Courthouse as there were members of the group who desired to register to vote or to learn the results of previous applications for registration. At that time they were again ordered by the officers to disperse and the police dog was again put into action. Within a matter of a few minutes two of the Negroes were arrested, one at the specific instruction of defendant Buff A. Hammond. The remainder of the group of Negroes then turned around peacefully and returned to the church at which time law enforcement officers of the City of Greenwood and Leflore County, including defendant

Wilbur Smith, appeared and arrested nine additional Negro registration workers. Eight of these registration workers were tried on March 28 and 29, 1963, and were convicted of breach of the peace. They were sentenced to four months in jail and to a fine of $200.00 each. Their appeal bonds were set at $500.00 each.

20. On March 28, 1963, about 42 Negroes went to the Leflore County Courthouse in Greenwood for the purpose of registering to vote. They were taken to the courthouse in automobiles and arrived there at approximately 10:20 a.m. After about eleven of these Negroes had applied for registration, the office for registration closed for lunch at 11:30 a.m. The 42 Negroes assembled outside of the courthouse to leave the downtown area of Greenwood. Three of the most elderly Negroes were dispatched in the only automobile available at that time. The remaining Negroes walked in an orderly fashion, two abreast, on the sidewalk easterly on Market Street, the street on which the courthouse faces. The Negroes were quiet and orderly; they were not protesting; they were not demonstrating; they were not armed with weapons nor were they carrying placards. They obeyed all traffic signals and caused no obstruction to the free flow of traffic both in the street and on the sidewalks. After they had walked about two blocks and were at a point on the south sidewalk 100 feet east of the intersection of Market and Howard, a city police car stopped near the head of the line and three policemen alighted from the car, one with a police dog, the other two pounding police clubs in their hands. These officers of the Greenwood Police Department, without investigation or inquiry, ordered the

Negroes to scatter. The Negroes promptly turned around, walked back to the corner of Howard and Market and began to proceed south on Howard Street, The officer handling the police dog, having full control of the dog both by command and leash, permitted and caused the dog to bite Reverend Tucker, one of the Negroes in the group at the end of the line. The dog had Reverend Tucker by the leg and, in trying to pull away from the dog, Reverend Tucker fell against a parked car; he attempted to get his leg away and get up; the dog kept pushing forward and Reverend Tucker fell between two parked cars into the street. The group of Negroes continued to walk peaceably down Howard Street accompanied by police officers until they were finally dispersed into small groups. During the entire period the attention of the police officers was solely and exclusively directed toward breaking up the Negro group and harassing the Negroes. These officers made no effort to determine, and were not concerned with, whether any other persons were nearby who could possibly present a danger of violence or a breach of the peace.

21. The arrests by the defendants of the registration workers, and the other conduct of the defendants described in paragraphs 19 and 20, and the detention and prosecution of the registration workers as described in paragraph 19, were without legal justification or excuse and were for the purpose of intimidating, threatening and coercing Negro citizens of Leflore County from applying for registration and from registering to vote, and for the purpose of preventing and discouraging the registration workers from instructing and assisting such citizens in their efforts to register.

22. Unless restrained by order of this Court, the defendants will continue to engage in unlawful acts the same or similar to those described in this complaint, and they will continue to unlawfully hold in custody the registration workers referred to in paragraph 19, and will thereby deprive persons otherwise qualified by law to vote in elections in Leflore County of their right to vote in such elections without distinction of race or color, and will by means of intimidation, threats, and coercion prevent, hinder, interfere with, and discourage such citizens from voting in elections for federal office.

WHEREFORE, plaintiff respectfully prays:

That this Court issue a preliminary and permanent injunction enjoining the defendants, their agents, servants, employees, and all persons in active concert or participation with said defendants, from:

(a) Intimidating, threatening, coercing, or attempting to intimidate, threaten or coerce any person for the purpose of interfering with the right of that person or any other person to become registered to vote and vote in Leflore County, Mississippi, for candidates for federal office, or punishing any person for having registered or attempted to register to vote and vote for any such candidate;

(b) Preventing, hindering or interfering with any person by reason of his race or color from attempting to register to vote and to vote in any election;

(c) Injuring or threatening to injure any person whether by using physical force, police dogs, or otherwise, arresting or threatening to arrest any person, prosecuting or attempting to prosecute any persons in the municipal

courts of Greenwood, Mississippi, or the state courts of Mississippi, for the purpose of interfering with the right of any Negro citizen to become registered or to vote in Leflore County, and to vote for candidates for federal office, or for punishment for having previously registered or voted, or engaging in any act or practice which would deprive any Negro citizen of Leflore County of any such right or privilege;

(d) Denying to any person, by arrest, prosecution, or otherwise, the right peaceably to speak or to assemble in protest against denials of the right to vote or to register to vote, or the failure or absence of protection in the exercise or attempted exercise of the right to vote or become registered to vote;

(e) Proceeding with the prosecution of, or further holding in custody, Lawrence Guyot, Lafayette Surney, Robert Moses, James Foreman, James Wilson Jones, Willie Peacock, and Charles McLauren, upon the charges of disorderly conduct tending to provoke a breach of the peace or on conviction of such charges in the courts of the City of Greenwood, Leflore County, or the State of Mississippi;

That this Court issue a preliminary and permanent injunction enjoining the defendant law enforcement officers, their agents, servants, employees, and all persons in active concert or participation with them from wilfully failing or refusing to afford reasonable police protection to persons exercising their right within Leflore County, to register to vote, to encourage or assist others to so register, or to peaceably assemble

for the purpose of encouraging others to exercise or to secure such right to vote;

That this Court retain jurisdiction of this action for the purpose of affording the relief prayed for and any other relief that is or may become appropriate; and grant to the plaintiff the costs and disbursements of this action.

ROBERT F. KENNEDY
Attorney General of the United States

BURKE MARSHALL
Assistant Attorney General

H. M. RAY
United States Attorney

JOHN DOAR, Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF GREENWOOD, et al., Defendants	CIVIL ACTION NO. _____ MEMORANDUM IN SUPPORT OF APPLICATION FOR TEMPORARY RESTRAINING ORDER

1. The United States brings this action under 42 U.S.C. 1971(c). The complaint, supported by affidavits, alleges that the defendants--the City of Greenwood and the County of Leflore, together with their officers and agents--have denied Negro citizens of Leflore County, Mississippi, rights secured by 42 U.S.C. 1971(a) and (b), by intimidating, threatening and coercing them on account of their race or color and for the purpose of interfering with their right to vote for candidates for federal office. It is alleged in the complaint that such intimidation, threats, and coercion have included, inter alia, the arrest and prosecution of Negro registration workers and other Negroes cooperating with them for peaceably demonstrating in protest against lack of protection in the exercise of the franchise,

and the use of police dogs against the leader of a group of Negroes who had left the courthouse in the City of Greenwood where they had gone for the purpose of registering to vote.

The United States seeks a temporary restraining order enjoining the defendants from arresting, detaining, prosecution, imprisoning or injuring any person for the purpose of preventing that person or any other person from registering to vote in Leflore County, or preventing any person from assisting or advising any other person to so register; denying to any person, by arrest, prosecution or otherwise, the right peaceably to speak or to assemble in protest against denials of the right to vote or to register to vote or denials of protection in the exercise of the right to become registered to vote; hindering or preventing any person by reason of his race or color from applying for registration to vote in Leflore County; taking further steps with respect to the prosecution or sentencing of named Negroes, upon charges of disorderly conduct tending to provoke a breach of the peace, or upon conviction of such charges, filed in the courts of the City of Greenwood, Mississippi on March 27, 1963, or failing to release each such individual upon the filing of his own recognizance pending further proceedings in this Court.

2. The temporary restraining order should issue. It is clear that the complaint states a claim for relief. The facts stated in the complaint, if true, establish that the defendants have intimidated and are continuing to intimidate the Negro citizens of Leflore County, Mississippi, through

the medium of injuring, arresting, and prosecuting Negro registration workers and other Negroes cooperating with them for the purpose of denying the Negro citizens of Leflore County rights secured by 42 U.S.C. 1971(a) and (b). Unless this Court grants a temporary restraining order the intimidation will continue. The effect of these continued acts of intimidation will be irreparable, for eligible Negro citizens will inevitably be deterred from exercising their right to become registered to vote. This, of course, represents an irreparable injury to the United States. United States v. Raines, 362 U.S. 17 (1960).

United States v. Wood, 295 F. 2d 772 (C.A. 5, 1961), cert. denied, 369 U.S. 850, is controlling. There, the Court of Appeals for the Fifth Circuit directed the District Court to issue a temporary restraining order enjoining the defendants from prosecuting a Negro voting registration worker where the Government's complaint and supporting affidavits showed that the prosecution was designed to intimidate, and had the effect of intimidating Negroes in the exercise of their right to vote in violation of 42 U.S.C. 1971(b). The Wood decision compels the issuance here of a temporary restraining order enjoining the defendants from implementing the convictions and sentences of the Negroes convicted and sentenced in the City Court of Greenwood on March 28, 1963. For if-- as Wood teaches--an intimidatory prosecution not yet begun must be enjoined on application for a temporary restraining order, a fortiori, where the prosecution is completed and the defendant is convicted and is serving his sentence,

an order requiring his immediate release on his own recognizance should be forthcoming. The intimidatory effect of continued and constant incarceration is obviously immeasurably greater. For the same reason issuance of a temporary restraining order is mandatory under the Wood rule to enjoin future arrests, prosecutions, and other intimidatory conduct, engaged in for the purpose of interfering with the right to vote.[1/] Such future arrests and prosecutions, particularly where, as here, they are alleged to have occurred on a recurrent basis, are bound to intimidate, threaten and coerce.[2/]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court issue a temporary restraining order as prayed for in the application of the United States filed herein.

H. M. RAY
United States Attorney

JOHN DOAR, Attorney
Department of Justice

1/ The arrests and prosecutions of the Negroes who were peaceably assembling to protest what they claimed was a lack of police protection in the exercise of their franchise not only was unconstitutional, see Edwards v. South Carolina, 372 U.S. 229 (1963), but was designed to, and had the inevitable effect of , intimidating Negroes of Leflore County in the exercise of the franchise. The ultimate purpose of the peaceable assembly was to secure the right to vote, and the arrests and prosecutions deter efforts to secure that right.

2/ There is no prohibition against enjoining threatened arrests and prosecutions by state officials if fundamental civil and personal rights are involved. Evers v. Dwyer, 358 U.S. 202; Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala.), affirmed, 352 U.S. 903; Morrison v. Davis, 252 F. 2d 102, 103 (C.A. 5), cert. denied, 356 U.S. 968; Lewis v. The Greyhound Corp., 199 F. Supp. 210 (M.D. Ala., 1961).

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF GREENWOOD, a municipal corporation, et al. Defendants.	CIVIL ACTION NO. NOTICE OF HEARING ON PLAINTIFF'S APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

TO THE DEFENDANTS, AND EACH OF THEM:

You are notified that plaintiff will move this Court in the courtroom of the United States District Court for the Northern District of Mississippi, in the Post Office Building in , Mississippi on day of , 1963, at o'clock .m. or as soon thereafter as counsel can be heard for a temporary restraining order and an order to show cause as is more particularly set forth in the application for a temporary restraining order and order to show cause attached hereto and made a part hereof.

H. M. RAY
United States Attorney

JOHN DOAR, Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF MISSISSIPPI

GREENVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CITY OF GREENWOOD, a municipal corporation, et al. Defendants.	CIVIL ACTION NO. NOTICE OF MOTION AND MOTION FOR A PRELIMINARY INJUNCTION

TO THE DEFENDANTS, AND EACH OF THEM:

You are notified that plaintiff, United States of America, will move this Court in the Court of the United States District Court for the Northern District of Mississippi, in the Post Office Building in , Mississippi on the , day of , 1963 at o'clock .m. or soon thereafter as counsel can be heard for a preliminary injunction enjoining and restraining, during the pendency of this action, the defendants, their agents, servants, employees and all persons in active concert or participation with them, from:

(a) intimidating, threatening, coercing, or attempting to intimidate, threaten or coerce any person for the purpose of interfering with the right of that person or any other person to become registered to vote and vote in Leflore County, Mississippi, for candidates for federal office, or punishing any person for having registered or attempted to register to vote and vote for any such candidate;

(b) preventing, hindering or interfering with any person by reason of his race or color from attempting to register to vote and to vote in any election;

(c) injuring or threatening to injure any person whether by using physical force, police dogs, or otherwise, arresting or threatening to arrest any person, prosecuting or attempting to prosecute any persons in the municipal courts of Greenwood, Mississippi, or the state courts of Mississippi, for the purpose of interfering with the right of any Negro citizen to become registered or to vote in Leflore County, and to vote for candidates for federal office, or for punishment for having previously

registered or voted, or engaging in any act or practice which would deprive any Negro citizen of Leflore County of any such right or privilege;

(d) Denying to any person, by arrest, prosecution, or otherwise, the right peaceably to speak or to assemble in protest against denials of the right to vote or to register to vote, or the failure or absence of protection in the exercise or attempted exercise of the right to vote or become registered to vote;

(e) Proceeding with the prosecution of, or further holding in custody, Lawrence Guyot, Lafayette Surney, Robert Moses, James Foreman, James Wilson Jones, Willie Peacock and Charles McLauren, upon the charges of disorderly conduct tending to provoke a breach of the peace or a conviction of such charges in the courts of the City of Greenwood, Leflore County, or the State of Mississippi;

And for an order enjoining, during the pendency of this action the defendant law enforcement officers, their agents, servants, employees and all persons in active concert or participation with them from wilfully failing or refusing to afford reasonable police protection to persons exercising their right within Leflore County to register to vote, to encourage or assist others to so register,or to peaceably

assemble for the purpose of encouraging others to exercise or to secure such right to vote.

And to issue such additional orders as are or may be appropriate during the pendency of this action.

Said motion will be based on this notice of motion and motion, upon the affidavit, pleadings, papers and memorandum of law on file in this case, and upon oral testimony to be adduced.

H. M. RAY
United States Attorney

JOHN DOAR, Attorney
Department of Justice

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

LILLIAN S. BLACKWELL and FREDDIE LEE HARRISON Plaintiffs v. ALBERTIS S. HARRISON, JR., et al., Defendants	CIVIL ACTION NO.

MOTION FOR PRELIMINARY INJUNCTION

Upon the verified complaint and the affidavits annexed hereto, the plaintiffs move the Court as follows:

1. To issue a preliminary injunction enjoining the defendants, their agents, servants, employees and subsidiary corporations and all other persons in active concert or participation with them who receive actual notice of the Court's order by personal service or otherwise, pending the final hearing and determination of this action, from depriving plaintiffs of their federal constitutional rights by means of obedience to, adherence to or enforcement or execution of, §§ 18.1-356 and 18.1-357, Code of Virginia of 1950, as amended, on the grounds that:

a. The aforesaid provisions of the Code of Virginia are unconstitutional and void, and defendants, unless restrained by this Court, will perform the acts referred to;

b. There are no motion picture theatres patronized by the general public that admit Negroes in the densely populated area of northern Virginia that is generally regarded as part of the Washington metropolitan area, and there is only one so-called Negro theatre there;

c. The defendant Neighborhood Theatre owns and operates most of the indoor theatres and about half of all the motion picture theatres in the densely populated area of northern Virginia;

d. Denial to plaintiffs of admission to theatres managed and operated by defendants Neighborhood Theatre, Jefferson Corporation of Virginia and Lee Amusement Corporation, under color of, and compulsion from, §§ 18.1-356 and 18.1-357, Code of Virginia, and as a result of the acts of the other defendants herein, described in paragraphs 11, 12, 14 and 15 of the complaint, creates continuing public humiliation and inconvenience and irretrievable deprivation of fundamental constitutional rights;

e. There is no dispute as to any of the material facts;

f. Relevant legal authorities in the United States Supreme Court and elsewhere are all in support of plaintiffs' claim;

g. The issuance of a preliminary injunction herein will not cause undue inconvenience or harm to the defendants but will prevent irreparable injury to the plaintiffs.

2. To convene a statutory court of three judges pursuant to Title 28, United States Code §2284 for the purpose of hearing and determining this application for a preliminary injunction and this cause.

Wherefore, it is respectfully prayed that this Motion for a Preliminary Injunction be granted.

/s/ Noel Hemmendinger

Noel Hemmendinger
Suite 705, 1000 Connecticut Avenue
Washington 6, D. C.

/s/ Allison W. Brown, Jr.

Allison W. Brown, Jr.
Suite 705, 1000 Connecticut Avenue
Washington 6, D. C.

/s / Otto L. Tucker

Otto L. Tucker
901 Princess Street
Alexandria, Virginia

ATTORNEYS FOR PLAINTIFFS

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

LILLIAN S. BLACKWELL and FREDDIE LEE HARRISON Plaintiffs, v. ALBERTIS S. HARRISON, JR., et al., Defendants.	CIVIL ACTION NO.

AFFIDAVIT IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

City of Washington,)
District of Columbia) ss.

Lillian S. Blackwell, being duly sworn, deposes and says:

1. She is a plaintiff in the above-entitled action.

2. This is an action to have declared unconstitutional, and to enjoin the enforcement of, certain statutes of the Commonwealth of Virginia requiring racial segregation in places of public assemblage, to wit: §§ 18.1-356 and 18.1-357, Code of Virginia, of 1950, as amended.

3. The defendants (except Neighborhood Theatre, Jefferson Corporation of Virginia, and Lee Amusement Corporation), by their adherence to, and readiness to enforce and execute the foregoing provisions of the Code of Virginia have deprived and are depriving plaintiff of her rights under the Fourteenth Amendment to the Constitution of the United States.

4. Defendants Neighborhood Theatre, Jefferson Corporation of Virginia and Lee Amusement Corporation, by pursuing a policy of racial discrimination, under color of, and compulsion from, the

the foregoing provisions of the Code of Virginia, have deprived and are depriving plaintiff of her rights under the Fourteenth Amendment to the Constitution of the United States.

5. Unless the defendants are enjoined and restrained during the pendency of this action from the commission of the acts referred to, plaintiff will suffer great and irreparable damage, in that she will suffer continuing public humiliation and inconvenience and irretrievable deprivation of fundamental constitutional rights.

/s/ Lillian S. Blackwell

Lillian S. Blackwell

Subscribed and sworn to before me
this 29th day of January, 1963.

Evelyne M. Newton

Notary Public

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

LILLIAN S. BLACKWELL and FREDDIE LEE HARRISON Plaintiffs, v. ALBERTIS S. HARRISON, JR., et al., Defendants.	CIVIL ACTION NO.

AFFIDAVIT IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

City of Washington,)
District of Columbia) ss.

Freddie Lee Harrison, being duly sworn, deposes and says:

1. She is a plaintiff in the above-entitled action.

2. This is an action to have declared unconstitutional, and to enjoin the enforcement of, certain statutes of the Commonwealth of Virginia requiring racial segregation in places of public assemblage, to wit: §§ 18.1-356 and 18.1-357, Code of Virginia, of 1950, as amended.

3. The defendants (except Neighborhood Theatre, Jefferson Corporation of Virginia, and Lee Amusement Corporation), by their adherence to, and readiness to enforce and execute, the foregoing provisions of the Code of Virginia have deprived and are depriving plaintiff of her rights under the Fourteenth Amendment to the Constitution of the United States.

4. Defendants Neighborhood Theatre, Jefferson Corporation of Virginia and Lee Amusement Corporation, by pursuing a policy of racial discrimination, under color of, and compulsion from, the foregoing provisions of the Code of Virginia, have deprived and are depriving plaintiff of her rights under the Fourteenth Amendment to the Constitution of the United States.

5. Unless the defendants are enjoined and restrained during the pendency of this action from the commission of the acts referred to, plaintiff will suffer great and irreparable damage, in that she will suffer continuing public humiliation and irretrievable deprivation of fundamental constitutional rights.

/s/ Freddie Lee Harrison

Freddie Lee Harrison

Subscribed and sworn to before me this 29th day of January, 1963.

Evelyne M. Newton

Notary Public

JUN 5 1963

file

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI

Jerry F. Boren, et al
Plaintiffs,

vs.

ELMER ELLIS, ET AL,
Defendants.

Cause No._____

Division No._____

COMPLAINT

I

The jurisdiction of this Court is invoked pursuant to the provisions of Title 28, United States Code, Section 1343(3), this being a suit in equity authorized by law, Title 43, United States Code, Section 1983, to be commended by a citizen of the United States or other person within the jurisdiction thereof, to redress the deprivation, under color of stature, regulation, custom usage, of a State or agent thereof, of righrs, privileges, and immunities sought to be secured by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States as hereinafter more fully set forth.

II

This is a proceeding for a temporary restraining order, and a preliminary and permanent injunction enjoining the University of Missouri, the Board of Curators of the University of Missouri, its President, and agents, servants and employees, from continuing the policy, practice, custom and usage of discriminating against the p plaintiffs and other Negro and citizens of the State of Missouri and other Negroes in attendance at the University of Missouri because of race or color, and for other relief as hereinafter set forth.

III

The plaintiffs in this case are all members of the Negro race and brign this action on their own behalf and on behalf of all other Negro students at the Univ2versity of Missouri who are similarly situated and affected by the policy, practice, custom and usage complained of herein. Plaintiffs are all citizens of the United States and the State of Missouri and are presently attending or are eligible to attend the University of Missouri, which is under

the jurisdiction, management and control of the defendant, officers of the State of Missouri, and supported by funds authorized by the Legislature of the State of Missouri. The members of the class on behlaf of which plaintiffs sue are so numerous as to make it impracticable to bring them all individually before this Court, but there are common questions of law and fact involved, common grievances arising out of common wrongs, and common relief is sought for each plaintiff for each member of the class. The plaintiffs fairly and adequately represent the interests of the class.

IV

Defendant, University of Missouri, is a public body corporate, organized and existing under and by virtue of the laws of Missouri; defendant Elmar Ellis is the president of the University of Missouri and is its chief executive officer; defendants James A. Finch, Jr., Lester E. Cox, J. A. Daggs, Doyle Patterson, Oliver B. Ferguson, Henry Andrae, Robert Neill, Orestes Mitchell, Jr., and John C. Caruthers are members of the Board of Curators of the University of Missouri. The defendants are charged by the laws of the State of Missouri with the duty of operating the University of Missouri and are presently operating the University pursuant to said laws.

V

Plaintiffs allege that the defendants herein, acting under color of the authority vested in them by the laws of the Stat of Missouri, require most students to live in housing approved by their agents and have pursued and are currently pursuing a policy, custom, practice and usage of requiring, encouraging, permitting, authorizing and abetting racial segregation in the housing of students attending said University and of encouraging, permitting, authorizing and abetting the denial of housing facilities to Negro students solely because of their race while said facilities are ejjoyed by white students

VI

Plaintiffs further allege that defendants and their agenst assign dormitory rooms on the basis of race in residence halls owned and operated by the University, that applicants for housing at said dormitories are questioned as to their race, and that no Negro student is assigned to a dormitory room with a white student unless the white student requests or approves such assignment. When by error or inadvertance a Negro student is assigned to a dormitory room with a white student, the Negro student is removed from that dormitory room.

VII

Plaintiffs further allege that defendants and their agents approve student housing in facilities provided by sororities, fraternities and cooperatives. A number of said groups have clauses in their constitutions which deny membership to persons of the Negroo race and others follow the custom, practice and usage of refusing to grant membership to persons of the Negro race, which facts are well known to the defendants and their agents. Said groups are permitted with approval of defendants and their agents to deny the use of their facilities to persons solely because of their race or color. The defendants and thier agents, permit, authorize, encourage, and abet racial discrimination in facilities subject to the control of said defendants and on real estate held by the University of Missouri.

VIII

Plaintiffs further allege that defendant and their agents enter into contracts and agreements with private persons under which such persons furnish for consideration housing facilities to students of the University. Such arrangements inure to the advantage of the persons furnishing facilities in view of the consideration received. Students are permitted to reside only in those private homes which meet the approval of the University, and only those householders who conclude agreements with the Universtiy are permitted to offer housing to students at the University. The University

furnishes lists of rooms in private homes that is has approved for occupancy. Defendants and their agents do not require that the contractors furnish facilities to all students irrespective of race, but rather authorize, permit, abet, and by thier authorization, encourage said householders to make facilities available only to members of one race. Said contractors may enter into these agreements and have residence in their homes approved,even though they deny facilities to students solely on the basis or race or color. The defendants and their agents do not require said contractors to offer these facilities on a non-discriminatory basis, though the defendants and their agents have the power to deny approval to any householder who fails to execute such an agreement.

IX

Plaintiffs and others have requested defendants and their agents to cease such discriminatory practices. These requests have been made from time to time. Such requests were rejected by agents of the defendants as "not in the interest of society." Plaintiffs and those similarly situated have exhausted all other remedies and have met only with refusals.

X

Plaintiffs allege that the policy, custom, practice and usage of the defendants and their agents in requiring, encourageing, permitting authorizing and abetting a policy of racial segregation and discrimination in housing facilities operated by or made available thruggh the action of the defendants and their agents, violate the rights of the plaintiffs and others similarly situated, and are i n violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States and Title 42, United States Code, Section 1983.

XI

Plaintiffs and each of them and those similarly situated have suffered and will continue to suffer irreparable injury and harm caused by the acts of the defendants and their agents complained of herein. They have no plain, adequate, or complete remedy to redress these wrongs other than this suit for injunctive relief. Any other remedy would be attended by such uncertainties and delays as to

deny substantial relief, would involve a multiplicity of suits, cause further irreparable injury and occasion damage, vexation and inconvenience to the plaintiff add those similarly situated.

WHEREFORE, plaintiffs respectfully pray that:

1. The Court issue a temporary restraining order against the defendants, immediately restraining and enjoining them and their agents from maintaining racial segregation in the operation of dormitories and frmm authorizing, permitting, encouraging and abetting racial segregation and the denial of facilities solely because of race in housing facilities subject to their control and approval.

2. The Court advance this cause on the docket and order a speedy hearing ~~fxfx~~ of this case.

3. That the Court after hearing, issue a permanent injunction against the defendant, enjoinng them, their agents, employees, servants, and attorneys, from maintaining racial segregation in the operation of dormitores, from permitting sororities, fraternities and cooperative that maintain housing facilities on real estate held by the University to deny membership and resultant housing facilities on the basis of race or color and from approving contracts with private householders or making available lists of homes to students unless said householders agree to accept all qualified students irrespective of race or color.

4. Plaintiffs further prays that this Court will allow them their costs herein and grant such further, ~~mxk~~ other, additional or alternative relief as may appear to the Court to be equitable and just.

Charles R. Oldham
Attorney for Plaintiff
722 Chestnut - Rm. 1117
St. Louis 1, Missouri
Phone - CE 1-0464

158L—Subpoena for Examination of Third Party; To Produce Books and Records (Duces Tecum). Supplementary Proceedings, Municipal Court Judgment. C. P. A. Article 45. Amended 1946.

b

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE, AT BROADWAY, NEW YORK

CIVIL
City Court of the City of New York,
County of NEW YORK

FOR SERVICE

In the Matter of Supplementary Proceedings

ST. LUKE'S HOSPITAL,

Judgment Creditor

against

ROBERT PRITCHARD,

Judgment Debtor

SUBPOENA
(Duces Tecum)
For Examination of
Third Party

2/28

The People of the State of New York

To CONGRESS OF RACIAL EQUALITY, by an Officer - 239 West 125th St., N.Y.C.
The third party to be examined, and McMILLAN THEATRE, Broadway & 116th St., N.Y.C.
GREETING:

Whereas, *a certain judgment in the sum of* $ 621.85 *has been recovered by* St. Luke's Hospital *the judgment creditor,* *against* Robert Pritchard *the judgment debtor,* *in the Municipal Court of the City of New York, Borough of* Manhattan : First *District, on the* 6th *day of* November *19* 61, *said judgment having been docketed in the office of the clerk of said Municipal Court, borough and district aforesaid, on the* 6th *day of* November, *19*61; *and the above named third party;* ~~resides in regularly employed;~~ *has a place for the regular transaction of business in person; in* New York *County, and*

Whereas, *the undersigned has reason to believe that the said third party—has property of the judgment debtor exceeding ten dollars in value—is indebted to the judgment debtor in an amount exceeding ten dollars.*

Now, therefore, we command you, *and each of you, to appear and attend before one of the justices of the* ~~Civil~~ *Court of the City of New York at a Special Term, part* II *thereof, to be held in and for the County of* New York *at the Court House, at* 111 Centre St., New York, N.Y.

on the 15th *day of* March *19* 63, *at* 9:30 *o'clock in the* fore *noon, to be examined under oath concerning property or moneys of the judgment debtor in your possession, and your indebtedness to the judgment debtor, and to produce at such examination the following books, papers and records:* proceeds due or to become due to the judgment debtor, Robert Pritchard, from his performance at the McMillan Theatre, Broadway and 116th Street, N.Y.C. on March 3rd, 1963.

and all other books, papers or records in your possession or control which have or may contain information concerning such property, moneys or indebtedness; and for a failure to attend you will be deemed guilty of a contempt of court and liable to punishment in accordance with article forty-five of the civil practice act.

This subpoena is void unless served within two years from the date of the judgment.

Witness, *Honorable* ROCCO A. PARELLA, *one of the justices of our said* ~~Civil~~ *Court of the City of New York, at the Court House, in the County of* New York *the* 28th *day of* February *19*63.

HAYT AND HAYT
Attorney for Judgment Creditor
(Office and Post Office Address)
99 Wall St.
Borough of Manhattan *City of New York*

READ CAREFULLY:

C. P. A. Section 781. TRANSFER OF PROPERTY BY JUDGMENT DEBTOR OR THIRD PARTY ENJOINED.

Upon the service of the subpoena upon the judgment debtor or any third party who has in his or its possession property or moneys belonging to the judgment debtor or who is indebted to the judgment debtor, such judgment debtor or third party is hereby forbidden to make or suffer any transfer or other disposition of, or to interfere with, any property belonging to the judgment debtor, or to which he may be entitled or which may thereafter be acquired by or become due to said judgment debtor, or to pay over or otherwise dispose of any moneys due or to become due to such judgment debtor, not exempt by law from application to the satisfaction of the judgment, until the further order of the court except that such third party shall not be obliged to withhold the payment of any moneys beyond double the amount claimed in such subpoena by the judgment creditor.

Any person served with said subpoena, who shall violate the provisions of such restraining provision, shall be subject to punishment by the court by fine and imprisonment or either, as and for a contempt. To effect such restraining provision, a copy of this section must be indorsed upon the copy of the subpoena served under this article.

The restraining effect of a subpoena served upon a third party shall not, however, apply to any property, money or indebtedness which appears from the books or records of the third party to belong to or to be due to a person or corporation other than the judgment debtor, unless the third party has knowledge or reason to believe that such property, money or indebtedness belongs to or is due to the judgment debtor; but the court may by order at any stage of the proceeding grant a restraining provision applicable to any such property, money or indebtedness, which is specified in the order, where it is shown to the court's satisfaction by affidavit or other written proof that there is reason to believe that such property, money or indebtedness belongs to or is due to the judgment debtor.

Unless previously vacated by order of the court or by stipulation of the parties, a restraining provision as herein provided shall remain in full force and effect for a period of two years from the date of the service of the subpoena, at which time it shall be deemed vacated for all purposes unless extended by order of the court for good cause shown.

THIS SUBPOENA REQUIRES YOUR PERSONAL APPEARANCE AT THE TIME AND PLACE SPECIFIED. FAILURE TO APPEAR MAY SUBJECT YOU TO A PENALTY.

A bill to be entitled

An act relating to elections; amending section 99.161 (10) to allow the campaign depository forty-five days to file its report; amending section 98.051 (1) to allow registration books to be opened at night before the general election; amending section 98.051 (4) to change time of opening of office of supervisor to 9:00 a.m. until 5:00 p.m. each weekday; amending section 101.71 (1) to change the words polling place to voting booth; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (10) of section 99.161, Florida Statutes, is amended as follows:

(10) DEPOSITORY'S STATEMENT AFTER ELECTION.--Within forty-five days after each election in which a candidate participates, the designated campaign depository or depositories of each such candidate shall file either the original or a true copy of all the deposit slips filed with the said depository by the campaign treasurer or deputy campaign treasurer, and the original or a true copy of all authorizations of the campaign treasurer or deputy campaign treasurers upon which funds were withdrawn from said depository. Such statement by such depository shall be filed with the officer before whom the candidate whose account the depository carries is required to qualify.

HB 837

Section 2. Subsection (1) and (4) of section 98.051, Florida Statutes, ~~is~~ are amended as follows:

98.051 Registration books for permanent registration system; when open.--

(1) Application for voter registration shall be accepted each weekday in the office of the supervisor, and at all permanent branch offices at which a deputy supervisor of registration officer is on duty, from 9:00 a.m. ~~until 12:00 noon, and from 1:00 p.m.~~ until 5:00 p.m., to permit qualified applicants to be registered to vote. Such offices may also be opened one night each week until 9:00 p.m. during the period from sixty days to thirty days prior to closing of the registration books for the first primary and the general election in any even-numbered year. For thirty days prior to closing of the registration books for the first primary and the general election, such offices may be opened for ~~two~~ five nights each week until 9:00 p.m.

(4) The board of county commissioners may authorize the supervisor to keep his office open for less time than specified in subsection (1) above, but at no time shall the office be open less than one day each week; provided, however, the office must remain open from 9:00 a.m. until 5:00 p.m. each weekday during the thirty day period prior to the closing of the registration books for any primary or general election. If the time when registration shall be accepted has been limited by the board of county commissioners, the supervisor shall give notice by publishing twice in a newspaper of general circulation printed in his county naming the days of the

week he will keep his registration books open. If there is no newspaper published in the county the supervisor shall have notices posted in at least three public places of which one shall be the courthouse.

Section 3. Subsection (1) of section 101.71, Florida Statutes, is amended as follows:

101.71 Polling place.--

(1) There is in each precinct in each county one polling place managed by a board of inspectors and clerk of election. The inspectors of election shall rail off and construct a space, in which to hold an election, with an opening at one end for entrance of the electors and an opening at the other for their exit. Only one elector shall be allowed to enter any voting booth at a time, and no one except inspectors shall be allowed to speak to him while casting his vote, and no inspector shall speak to or interfere with the elector concerning his voting, otherwise than to perform his duties as such inspector.

Section 4. This act shall become effective on July 1, 1967.

MISCELLANEOUS LEGAL CASES

Society of Wisconsin

Please Retain Original Order

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGIA TOWNSEND, et al, Plaintiffs,	)	
v.	)	No. 68 C 2134
HAROLD O. SWANK, et al, Defendants,	)	

GEORGIA TOWNSEND AND OMEGA MINOR PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' HAROLD O. SWANK, DAVID L. DANIEL, AND MAE WITHERS MOTIONS TO STRIKE AND DISMISS THEIR COMPLAINT

1. Plaintiffs GEORGIA TOWNSEND and OMEGA MINOR hereby adopt the Memorandum of Plaintiffs LOVERTA ALEXANDER and JEROME ALEXANDER filed in Opposition to Defendants HAROLD O. SWANK, DAVID L. DANIEL, and MAE WITHERS Motions to Strike and Dismiss.

2. Defendants maintain that Plaintiffs herein seek money damages against the State of Illinois. The State of Illinois, however, is not a party to this lawsuit, nor is the Cook County Department of Public Aid a party to this lawsuit. The Motion to Intervene, of Plaintiffs herein, misnomered the Cook County Department of Public Aid as a Defendant to this lawsuit, but Plaintiffs' complaint filed herein contains no mention of anyone as Defendants except HAROLD O. SWANK and DAVID L. DANIE. Plaintiffs herein are suing Defendants as individuals.

3. Defendants are proper parties to this lawsuit. The court in Great American Insurance Company v. Stilley, 212 F. Supp. 303 (1962), a case cited by Defendants as prohibiting their being sued, held, in fact, that officials such as Defendants are proper parties to such a suit as this:

> "The court finds that defendant W. J. Payes, Jr., Director, Department of Public Works and Buildings, Division of Highways, State of Illinois, is a proper party to this action and further finds that this action is not within the constitutional prohibitions and, accordingly, finds the motion to dismiss should be denied." Great American Insurance Company v. Stilley, 212, F. Supp. 303(1962).

4. The court is Truitt v. State of Illinois, 278 F. 2d 819 (1960), the other federal case cited by Defendants as prohibiting their being sued, relied upon their holding in Stift v. Lynch, 7 Cir., 267 F. 2d 237, a false imprisonment case where the Plaintiff failed to allege a cause of action based on the Civil Rights Acts. Plaintiffs herein have a cause of action which is based upon Tille 42, U.S.C., Section 1983, and Plaintiffs herein, and the class they represent, have alleged in their complaint a denial of their civil rights.

WHEREFORE, Plaintiffs herein pray:

(A) That Defendant Motions to Strike and Dismiss be denied.

(B) Such other and further relief as may be necessary and proper.

Michael F. Lefkow
One of Attorneys for Plaintiff Herein

Thad B. Eubanks
Arnold D. Breyer
Michael F. Lefkow

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOVERTA ALEXANDER, et al, Plaintiff	)	
vs.	)	No. 68 C 2134
HAROLD O. SWANK, et al, Defendants	)	

NOTICE OF MOTION

TO: Mr. Dean Bilton, Assistant States Attorney
Attorney for Defendants DAVID L. DANIELS, Director
Cook County Department of Public Aid and MAE WITHERS,
Supervisor, Woodlawn District Office, Cook County
Department of Public Aid
Chicago Civic Center - 5th Floor 321-5452
Randolph and Clark Streets
Chicago, Illinois

Mr. William G. Clark, Attorney General
Mr. Bernard Genis, Assistant Attorney General of Counsel
Attorney for Defendant HAROLD O. SWANK, Director,
Illinois Department of Public Aid
State of Illinois #FI 6-2000
160 North LaSalle Street
Chicago, Illinois

Mr. Melvin B. Goldberg
Attorney for Plaintiffs
Mandel Legal Aid Clinic
Chicago Legal Aid Bureau
6020 South University Avenue
Chicago, Illinois 60637

Mr. Stanley A. Bass
Community Legal Counsel
116 South Michigan Boulevard
Chicago, Illinois

Mr. Carl Rachlin
Scholarship, Education and Defense Fund
for Racial Equality
164 West Madison Avenue
New York, New York

You are hereby notified that on Wednesday, March 12, 1969, at 10:00 A.M. or as soon thereafter as counsel may be heard, we shall appear before the Honorable Abraham Marovitz, Judge of the Court for the Northern District of Illinois, Eastern Division, in the courtroom usually occupied by him in the United States Court House at Chicago, Illinois, and then and there move for leave to file the complaint of the intervening parties plaintiff and class representatives. A copy of this motion is hereby served upon you.

Michael F. Lefkow

One of Attorneys for Movants-Plaintiffs
Thad B. Eubanks, Michael F. Lefkow,
Arnold D. Breyer
Attorneys for Movants-Plaintiffs
4622 South Dr. Martin Luther King Drive
Legal Aid Bureau
Chicago, Illinois
Telephone - 548-6700

Received a copy of the above notice this _____ day

of _____, 1969 before _____P.M.

_____

PROOF OF SERVICE

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

The undersigned, being first duly sworn on oath, deposes and says that a copy of the foregoing

C O M P L A I N T

was served upon the following, by delivering said copies personally on March 7, 1969, to the following:

Mr. Dean Bilton
Assistant States Attorney
Chicago Civic Center-5th fl.
Randolph & Clark Streets
Chicago, Illinois

Mr. Stanley A. Bass
Community Legal Counsel
116 S. Michigan Ave.
Chicago, Illinois

Mr. William G. Clark, Attorney General
Mr. Bernard Genis, Ass't Attorney
General of Counsel
160 North LaSalle Street
Chicago, Illinois

Mr. Melvin B. Goldberg, Attorney
Mandel Legal Aid Clinic
6020 S. University Ave.
Chicago, Illinois

Michael F. Leffkow

Subscribed and Sworn to before me
this 7th day of March, 1969.

Sharon J. Carlson
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOVERTA ALEXANDER, individually and on behalf of her minor son JEROME ALEXANDER, GEORGIA TOWNSEND, individually and on behalf of her dependent daughter OMEGA MINOR, and OMEGA MINOR, individually, and all on behalf of all OTHER PERSONS SIMILARLY SITUATED, Plaintiffs	)	
v.	)	No. 68 C 2134
HAROLD O. SWANK, Director, Illinois Department of Public Aid and DAVID L. DANIEL, Director, Cook County Department of Public Aid, Defendants	)	

COMPLAINT

Now come GEORGIA TOWNSEND, individually and on behalf of her dependent daughter, OMEGA MINOR, and OMEGA MINOR, individually, and both as members of the class described in the original complaint, by Thad B. Eubanks, Michael F. Lefkow and Arnold D. Breyer, their attorneys, complaining of all defendants and praying damages for depriving plaintiffs, and the class they represent, under color of law, of the rights, privileges and immunities secured to them, and the class they represent, by the Constitution and laws of the United States, and say:

1. This is an action for declaratory judgment pursuant to Title 28, U.S.C. Section 2201, that Chapter 23,

Section 4-1.1, Child Age Eligibility, Illinois Rev. Stat., 1967, and Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual, a state wide regulation; are invalid and unconstitutional on their face and as applied to plaintiffs because they are in violation of and in conflict with Title 42, U.S.C., Sections 602(a)(9) and 606(a), supremacy of said federal statutes, being guaranteed by Article VI, Clause 2, of the United States Constitution, and because they are in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and also an action for supplamentary injunctive relief, pursuant to Title 42, U.S.C., Section 1983, to enjoin the operation and enforcement of the above cited Illinois statute and regulation insofar as they deny persons, such as plaintiffs and the class they represent, a public assistance payment under the Illinois Aid to Families with Dependent Children (hereinafter referred to as AFDC) program to or for the benefit or support of any otherwise eligible child who is between the ages of 18 and 21 and a full time student at a college or university. The grounds for the relief sought in this action are:

a. Article VI, Clause 2, Supremacy, of the United States Constitution guarantees the supremacy of federal law when state and federal law are in conflict. Title 42, United States Code, Section 602(a)(9) requires that a State plan, as a condition of federal financial assistance, must furnish aid to all eligible persons with reasonable promptness. Title 42, United

States Code, Section 606(a)(1) and (2) defines eligible persons to include college and university students.

Title 42. United States Code. Section 606(a):

"(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care ..., and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;" (Emphasis added).

However, the said Illinois statute and regulation define eligible persons as not including college or university students.

Chap. 23. Ill. Rev. Stat., 1967. S.4-1.1. Child age eligibility:

"The child or children must be under 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school." (Emphasis added).

Ill. Dept. of Public Aid. Catagorical Assistance Manual. S. 150. Age requirements: ADC:

"Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)" (Emphasis added.)

Pursuant to the above cited Illinois Statute and regulation the defendants herein, by excluding plaintiffs, who are otherwise eligible, from an AFDC grant, solely because plaintiff OMEGA MINOR is a full time college student, have deprived and continue to deprive plaintiffs of the benefits and privileges extended to them by federal law and such federal law

is declared supreme by Article VI, Clause 2, of the United States Constitution.

b. The above cited Illinois statute and regulation arbitrarily and unreasonable and contrary to the purposes of the AFDC program, discriminate in violation of the Equal Protection and Due Process Clauses of this Fourteenth Amendment to the United States Constitution betwecn children who are students in a college or university and children who are students in a high school, vocational or technical training school by excluding from AFDC benefits those children who are students in a college or university.

2. This is a federal cause of action to secure rights, privileges and immunities established by federal law and the United States Constitution as provided in :

> Title 42. United States Code. S. 1983. Civil action for deprivation of rights:
>
> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Jurisdiction is conferred on this Court by 28 U.S.C. SSC 1343(3) and (4), providing for original jurisdiction of this Court in suits authorized by 42 U.S.C. SS. 1983, and SS. 2201 and 2202 authorizing declaratory judgments.

3. Application is hereby made for the convening of a three-judge Federal District Court to hear and determine this matter pusuant to 28 U.S.C. 2281 and 2284.

4. Plaintiffs GEORGIA TOWNSEND and OMEGA MINOR are citizens of the United States and of Illinois and reside in Chicago, Illinois.

a. GEORGIA TOWNSEND is the mother and sole support of OMEGA MINOR, an illegitimate child born December 19, 1948.

b. GEORGIA TOWNSEND is a disabled individual and has no income, resources, support or maintenance other than public assistance payments from the Illinois and Cook County Departments of Public Aid as administered by defendants.

c. GEORGIA TOWNSEND received an AFDC grant on behalf of herself and on behalf of her dependent daughter OMEGA MINOR from December, 1953 to April, 1960. From April, 1963 to January, 1967 GEORGIA TOWNSEND received an Aid to the Disabled grant for herself and an AFDC grant for OMEGA MINOR. Said AFDC grant was cancelled in January, 1967, while OMEGA MINOR was enrolled as a full time student at South East Junior College, Chicago, Illinois. The combined grants amounted to $171.19 in December, 1966.

d. The AFDC grant in the monthly amount of $87.94 was cancelled for the stated reason that OMEGA MINOR had become 18 years of age and was not a full time high school, vocational or technical training school student.

e. An Aid to the Disabled grant in the monthly amount of $123.25 was then issued to, and took account only of the needs of plaintiff GEORGIA TOWNSEND. A General Assistance grant in the monthly amount of

$34.54 was issued to OMEGA MINOR in January, 1967, and was cancelled in May, 1967.

f. Plaintiffs have existed since June, 1967 on plaintiff GEORGIA TOWNSEND'S Aid to the Disabled grant from the Illinois and Cook County Departments of Public Aid as administered by defendants.

g. At the time of cancellation of the AFDC grant in January, 1967, plaintiffs were receiving $171.19 per month. Thereafter, since June, 1967, plaintiffs received $123.25 per month. This is a cut of 28% in the family's income, and said cut in income was, and is, in violation of federal law.

h. Plaintiffs are now receiving $116.00 per month from plaintiff GEORGIA TOWNSEND'S Aid to the Disabled grant. Both GEORGIA TOWNSEND and OMEGA MINOR subsist on said grant. Both plaintiffs are suffering irreparable injury and harm and are in a state of semi-starvation.

i. Plaintiff OMEGA MINOR has at all times since January, 1967, been a full time student at South East Junior College, Chicago, Illinois.

j. On September 26, 1968, with the assistance of counsel, plaintiffs made another application for an AFDC grant.

k. Said application for AFDC benefits was denied on November 8, 1968, by the Cook County Department of Public Aid as administered by William H. Robinson, preceding Director to defendant DAVID L. DANIEL, on the grounds that plaintiff OMEGA MINOR was not in attendance at a vocational or technical school as required by the state wide regulation, Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual.

l. Plaintiffs filed a statutory appeal with the Illinois Department of Public Aid. On November 21, 1968, a hearing was held before the Illinois Department of Public Aid.

m. On December 11, 1968, defendant HAROLD O. SWANK, Director, Illinois Department of Public Aid, rendered his decision upholding the denial of AFDC benefits to plaintiffs by the Cook County Department of Public Aid by interpreting the Illinois statute as excluding a vocational course of study or any course of study pursued at a college or university as proper qualification for AFDC benefits. A copy of the decision of defendant HAROLD O. SWANK in plaintiffs' appeal is attached hereto and marked "Exhibit A".

n. Plaintiffs have suffered severe and irreparable injury to their health and well being, including inadequate food, clothing, shelter, and the inability to pay debts, and to their family life as a result of defendants' operation and enforcement of the Illinois statute and regulation complained of herein, and plaintiffs will continue to suffer the same until relief is granted by this court.

5. The Illinois statute and regulation in question herein are in direct conflict with and in violation of Title 42, U.S.C., 602(a) which provides for AFDC benefits to the age of 21 for students "regularly attending a school, college, or university, or regularly attending a course of vocational or technical training

designed to fit him for gainful employment."

a. A State which participates in the federally finance AFDC program must submit a plan to the Secretary of Health, Education and Welfare (hereinafter referred to as HEW) which must conform with the Social Security Act and with rules and regulations promulgated by HEW.

b. Title 42, U.S.C. Section 602(a)(9) requires: "(a) A State plan for aid and services to needy families with children must (9) provide ... that all individuals wishing to make application shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals." (Emphasis added).

c. Title 42, U.S.C., Section 602(a) defines a "dependent child" as:

Title 42 United States Code SS406(a)(1) and (2).

"(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care..., and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment;" (Emphasis Added).

d. Plaintiff OMEGA MINOR is and has been a dependent child and is and has been an eligible individual within the meaning of the above cited federal statutes, and she and her mother GEORGIA TOWNSEND are entitled to have an AFDC grant furnished to them with reasonable promptness.

e. The above cited federal statutes are declared supreme by Article VI, Clause 2, Supremacy, of the United States Constitution.

6. Chapter 23, Section 4-11, Child Age Eligibility, Illinois Revised Statutes, 1967, and Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual are unconstitutional on their face and as applied to plaintiffs because they are in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Constitution insofar as they deny benefits to plaintiffs, and the class they represent, who are otherwise eligible children in a college or university and their representative, while granting AFDC benefits to children of the same age and otherwise eligible who are attending a high school, vocational or technical training school.'

a. The above cited Illinois statute and regulation creates a classification which arbitrarily, unreasonably and in contradiction to the express purpose of the AFDC program, discriminates against potential recipients who are full time students in a college or university by distinguishing them from high school, vocational or technical training school students and by excluding them from benefits granted to or for the support of high school, vocational or technical training school students.

b. Plaintiffs would be entitled to an AFDC grant until plaintiff OMEGA MINOR was 21 years of age if she was enrolled as a full time student in a high

school, vocational or technical training school.

c. The purpose of granting benefits to recipients who are students until they are twenty-one years of age is to encourage needy children of indigent families to gain the education they need to attain their capacities for self-support and responsible citizenship. While on the other hand, the exclusion of college and university students by the Illinois statute and regulation clearly thwarts the purpose of granting said AFDC benefits. Such an exclusion is irrational and irreconcilable with the basic purpose of the AFDC program.

7. Plaintiffs have no adequate remedy at law.

8. Defendant HAROLD O. SWANK is the Director of the Illinois Department of Public Aid. He is responsible for adopting and implementing all the policies, rules and regulations of the Illinois Department of Public Aid, including Section 150 of that Department's Categorical Assistance Manual.

9. Defendant DAVID L. DANIEL is the Director of the Cook County Department of Public Aid. Subject to regulations issued by the State Department, he is responsible for administration of all aspects of Public Aid in Cook County, including implementation, with respect to plaintiffs, of Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual.

10. Plaintiffs' request for an AFDC grant has been denied by the defendants. Further exhaustion of administrative remedies is not required in this case since in view of the interpretation of defendant HAROLD O. SWANK in his administrative

decision in plaintiffs' appeal, further attempt would be furtile. Plaintiffs have no adequate administrative remedy for the regulation. Exhaustion is likewise not required in actions brought under the Civil Rights Act.

11. Plaintiffs seek judgment for $1,988.70 in their favor and against defendants for the amount of public assistance improperly withheld since January, 1967, to this date, and which will be withheld in the future until the judgment and an injunction by this court is entered ordering defendants to do otherwise. A schedule of benefits withheld is attached hereto and marked "Exhibit B".

12. Plaintiffs GEORGIA TOWNSEND and OMEGA MINOR bring this class action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a)(b)(2) and (b)(3) of the Federal Rules of Civil Procedure. The members of the class similarly situated are children between the ages of 18 and 21 and their parents or legal guardians who are denied A.F.D.C. benefits by the defendants solely because said children are or could be, full time college or university students as opposed to being full time high school, trade school or vocational school students. All members of the class are residents of the State of Illinois. The members of this class are so numerous as to make joinder impracticable; there are questions of law and fact common to the class; the claims representative of the parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the defendants have acted on grounds generally applicable to the class, thereby making

appropriate final injunctive relief and corresponsing declaratory relief with respect to the class as a whole.

WHEREFORE, Plaintiffs pray:

(A) That a three judge court be convened to hear and determine this cause, pursuant to Title 28, U.S.C., Section 2281 and 2284.

(B) That this court enter a declaratory judgment pursuant to Title 28, U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, that Section 150 of the Illinois Department of Public Aid Categorical Assistance Manual and Chapter 23, Section 4-1.1, Ill. Rev. Stat., 1967, ciolate Article VI and the Fourteenth Amendment of the United States Constitution insofar as they exclude from the Illinois AFDC plan persons declared eligible by Title 42, U.S.C. Section 606(a).

(C) That this court enjoin defendants, their sucessors, agents and employees from failing or refusing to make public assistance payments under the AFDC program to or for the benefit or support of any otherwise eligible child who is between the

ages of 18 and 21 and a full time student at a college or university, and that this court grant such an injunction temporarily, pending the outcome of this case.

(D) That this court enter judgment for $1,988.70 in favor of plaintiffs and against defendants as damages for public assistance payments improperly withheld from plaintiffs.

(E) That this court grant plaintiffs such other and further relief as may appear just, including damages for defendant's unlawful past refusal to grant plaintiffs the AFDC payments they are entitled to receive.

Georgia Townsend

GEORGIA TOWNSEND, individually and
on behalf of her dependent daughter,
OMEGA MINOR

Omega Minor

OMEGA MINOR, individually

Michael F. Lefkow

One of Attorneys for Plaintiffs

Thad B. Eubanks, Michael F. Lefkow,
and Arnold D. Breyer
Attorneys for Plaintiffs
Legal Aid Bureau
4622 S. Martin L. King Drive
Chicago, Illinois 60653
Telephone 548-6700

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)

GEORGIA TOWNSEND, being first duly sworn, deposes and says, that she is one of the plaintiffs herein, that she has read the foregoing Complaint by her subscribed, and that the contents thereof are true in substance and in fact.

Georgia Townsend.
GEORGIA TOWNSEND

Subscribed and Sworn to before me this 3rd day of March, 1969, A.D.

Evelyne L. Williams
NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF C O O K)
C

OMEGA MINOR, being first duly sworn, deposes and says, that she is one of the plaintiffs herein, that she has read the foregoing Complaint by her subscribed, and that the contents thereof are true in substance and in fact.

Omega Minor
OMEGA MINOR

Subscribed and Sworn to before me this 3rd day of March, 1969, A.D.

Evelyne L. Williams
NOTARY PUBLIC

ILLINOIS DEPARTMENT OF PUBLIC AID

ROOM 2000—160 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60601

December 11, 1968

FInancial 6-2000 Ext. 615

CERTIFIED MAIL

APPEAL 68-160

Mrs. Georgia Townsend
3938 S. Lake Park Avenue
Chicago, Illinois

Dear Mrs. Townsend: RE: ADC 203-48272

The Illinois Department of Public Aid has considered your written Notice of Appeal filed on November 8, 1968 from a decision of the Cook County Department of Public Aid in denying your application for public aid under the Aid to Dependent Children program filed on behalf of your daughter, Omega Minor, age 19.

On November 8, 1968, the county department denied the application filed on September 26, 1968, on the ground that your daughter was over the age of 18 and not in attendance at a vocational or technical training school as required by agency regulation. It based its decision upon Article IV, Section 4-1.1 of the Illinois Public Aid Code and the Department's Categorical Assistance Manual Chapter 150.

Your daughter is in regular full-time attendance at the Chicago City College which is operated and maintained by a governmental agency of the City of Chicago under the jurisdiction of the State of Illinois. It offers two-year preparatory courses at college level and maintains eight different campuses located throughout the City of Chicago.

It was your contention, through your legal counsel, that your daughter is being deprived of her constitutional rights in this matter; that she is eligible for public aid under the Supremacy Clause, Article VI, Clause 2, of the United States Constitution, and the Federal Social Security Act, Title 42, U.S.C., Section 406 (a)(1) and (2). Your legal counsel submitted a written brief in support of his case. His primary contention is that the provisions of the Illinois Public Aid Code and its regulations relied upon by the county department are discriminatory to your daughter under the facts in the case.

Article IV, Section 4-1.1 of the Illinois Public Aid Code reads as follows:

> "CHILD AGE ELIGIBILITY.) The child or children must be under 18, or age 18 or over but under age 21 if in regular attendance in high school or in a vocational or technical training school. 'Regular Attendance', as used in this Section, means attendance full time during

COPY

the regular terms of such schools, or attendance part time during such regular terms as may authorized by rule of the Illinois Department for the purpose of permitting the child to engage in employment which supplements his classroom instruction or which otherwise enhances his development toward a self-supporting status."

The Department's Categorical Assistance Manual Chapter 150, Section 150, reads, in part, as follows:

"AGE REQUIREMENTS

"Dependent children under 18 years of age, unless 18 through 20 years of age and in regular attendance in high school or vocational or technical training school. (This does not include 18 through 20 year old children in college.)"

The Department is bound by the age requirements as set forth by the General Assembly in Section 4-1.1 recited above, and the exception contained therein to include only those over the age of 18 in high school, vocational, or technical training schools. * <We are not cognizant of any power or authority of our own to enlarge the scope of the Act to include the matter of the case before us.> Under such concept, we will uphold the decision reached by the county department in this case.

Based on the foregoing, the decision of the Cook County Department of Public Aid in denying your application for public aid under the Aid to Dependent Children program on behalf of your daughter, Omega Minor on November 8, 1968 is affirmed. As was explained at the hearing, the Department's decision is subject to review only under the Illinois Administrative Review Act.

Very truly yours,

Harold O. Swank

HAROLD O. SWANK
Director

HOS:cc
cc: Mr. Arnold D. Breyer
Attorney at Law
Michael F. Lefkow
Attorney at Law

SCHEDULE OF AFDC BENEFITS WITHHELD AS OF

FEBRUARY, 1969

AFDC Personal Allowance For Child; 13-20 years old (Two in household):

Jan. 1967 through Nov. 1967.	11mo. @ $42.22/mo.	= $464.42	
Dec. 1967 through June 1968.	7mo. @ $42.78/mo.	= 299.46	
July 1968 through Feb. 1969.	8mo. @ $43.81/mo.	= 350.48	
		$1114.36	

Note: Omega Minor received General Assistance from Jan. 1967 through May 1967:

	4mo. @ $34.54/mo.	= -138.16	
	Sub-total	976.20	976.20

Transportation (School Carfare):

Jan. 1967 through Feb. 1969	25mo. @ $12.00/mo.	= $300.00	300.00

Lunches

Jan. 1967 through Feb. 1969	25mo. @ $4.50/mo.	= $112.50	112.50

Registration and School Fees

Jan. 1967 through Feb. 1969	6 semesters @ $10/sem	= $60	60.00

School Books and Supplies

Jan. 1967 through Feb. 1969	6 semesters @ $40/sem	= 240.00	240.00

Educational Allowance

Jan. 1967 through Feb. 1969	25mo. @ $12/mo.	= $300.00	300.00

$1,988.70

"Exhibit B"

STATE OF MISSISSIPPI
COUNTY OF HINDS

I, JESSE LEE HARRIS, BEING DULY SWORN ACCORDING TO LAW, DEPOSES AND SAYS:

On or about May 21, 1962, Mr. Luvaghn Brown and I went to the Hinds County Court in Jackson, Mississippi, on Pascagoula Street, at about 9:20 a.m. We went into Judge Russell Moore's court room and took a seat on the first bench on the left side as one enters the court. After about a minute we were approached by a man who did not identify himself. I have since learned that his name is Mr. Carter. He told us to leave. We asked him why. He said, "You boys have to leave or move to the other side of the court room."* At that time he went up to Judge Moore and spoke to him. About a minute later he came back and told us to leave the court room, and we left. At about 1:20 p.m. we went back to the court room and took a seat at the same place. We were approached by Mr. Carter who again told us to leave. At that time, Judge Moore asked, "Are you boys refusing to obey the bailiff's orders?" There were approximately 20 people in the court room at that time. I said, "No." The Judge said to Mr. Carter, "Take them away." Mr. Carter then took us to lock us up. He took us to the elevator. I asked, "Where are we going?" Mr. Carter said nothing. Mr. Carter called in another guard, and Mr. Carter said to the guard, "Come go up with me." Then we got on the elevator, and we were taken to the jailer, whose name is Mr. P.A. Hutton, While the jailer was taking our possessions, the bailiff said to Luvaghn Brown, "Next time I put my hands on you, don't look surprised." Mr. Hutton took me to a cell called the bullpen. He took Luvaghn to the juvenile cell. There were 29 others in the bullpen. Some of them asked me, "What are you doing here." I said, "I don't know." The next morning, May 22, 1962, we had breakfast at about 6 a.m. Later, the jailer called my name and told me to come outside. He told me to come out in the hall. I asked, "For what?" He said, "Just go on." In the hall there was a big man, well over 6 feet tall, standing there with a warrant in his hand. He asked, "Is your name Jesse Harris." I said, "That's right." He asked, "Nigger, can you say 'yes sir'?" I said, "Yes, sir." He said, "I have a warrant for your arrest, and I hope that they send you to the Hinds County Farm for ten years. That's all." Then the jailer came back and told me to get back in the bullpen. After about an hour I was taken to a small cell adjacent to the bullpen, which I shared with four others. Our next meal was at 11:30 a.m. About 4:30 p.m., Luvaghn and I were taken down to the court room for our trial. One of the guards took us to court and we were handcuffed together. After we got to the Court Room, we were told to stand against the wall in the hall. While standing there we saw Mr. Thomas Gaither, who is a Field Secretary for the Congress of Racial Equality, and a young lady. We began talking to him when the guard came and took us into a room. The guard came back and got us after about ten minutes, and told us that we were to be taken to the small court room because the large court room was still in use. This was at approximately 4:45 p.m. The two of us were in the small court room for about ten minutes when Mr. Thomas Gaither and the young lady came in and took a seat on the colored side of the court room. After about ten more minutes, Judge Moore, Mr. Carter, the court stenographer, and about four other white men came into the court room. The court was called to order by Judge Moore a little after the hour of 5 p.m. Mr. Carter and I were sworn in and then Mr. Carter took the stand. Mr. Carter stated that on the date of May 22, 1962, he asked me to move from the white side of Judge Moore's court and I had refused to move. He said that he had asked me to move twice. He further testified, "And they just set there, and I put them under arrest." Judge Moore asked me whether I wanted to say anything to Mr. Carter while he was on the witness stand. I said, "No." The Judge then told me to take the witness stand. I did and testified that what Mr. Carter had said was true. I then said that Mr. Carter did not identify himself when he came to me on the previous day in the court room and asked me to move. I also testified, "Mr. Carter came to us in the court room, asking us to move to the Negro side. I asked Mr. Carter why we had to move. Mr. Carter just said that we were going to have to move. At that time the Judge asked me, [illegible] He again asked him why. Mr. Carter said, "You boys just have to leave.

'Are you going to obey the bailiff?' and I said 'no' because he gave us no reason for having asked us to move." The Judge asked me, "Is that all?" and I said, "Yes." He then asked me to step down. The Judge then said, "Do you have any further comments or questions?" I said, "No." and then the Judge said, "I sentence you, Jesse Harris, to the Hinds County Farm for 30 days and a $100 fine. That is all. Take your seat." At this time he called Luvaghn Brown. He asked Mr. Carter to take the stand and testify. Mr. Carter testified to the same effect as above, that he had asked Luvaghn Brown to move and Luvaghn Brown had refused. The Judge then asked Luvaghn Brown whether he had any questions he wanted to ask of Mr. Carter. Luvaghn Brown said that he did. After Luvaghn Brown questioned the bailiff, the Judge asked Luvaghn Brown to take the stand. Luvaghn Brown testified to the same effect as I did, viz. that he had been asked to move by Mr. Carter, who had not identified himself, and Mr. Carter had given no reason for wanting us to move. The Judge then asked Luvaghn Brown, "Did you hear the bailiff's order?" Luvaghn Brown said, "Yes," and repeated that Mr. Carter had given no reason for our having to move. The Judge then asked Luvaghn Brown whether there was anything he wanted to say. Luvaghn Brown said yes. He said, "Judge Moore, I would like to make a motion for another Judge because you were the judge that had placed us under arrest." The Judge replied, "Motion denied." Luvaghn Brown asked the Judge for his reason for having us arrested. The Judge said, "I will send you to the Hinds County Jail for 30 days and a $100 fine, to let you know that the Court does not have to have a reason for everything it does." (Note: the trial took about 40 minutes.) He told the officer who had brought us down from upstairs to take us back to lock us up. When we reached the elevator, we met two other officers and one told us to get in. Before the elevator started, one of the officers told us to face the wall of the elevator with our hands up, and at that time he asked Luvaghn Brown what was his name. Luvaghn Brown told him, and then the officer asked him where he lived. Luvaghn Brown said, "Jackson." He asked, "What part?" Luvaghn Brown said, "Georgetown." He then asked me my name, and I told him. He asked me where I lived and I replied, "North Jackson, Georgetown." and he said, "You damn nigger, I mean what street?" I said, "Parkway Avenue." At that time he hit me twice on the back of the neck with his fist. The blows were so hard that my knees buckled, and I slightly turned my head because of the shock of the violent and unexpected blow. He then hit me with a closed fist in my nose, which began to bleed quite heavily. He said, "You damn nigger." About that time the elevator had stopped, and he told us to get out. While getting out of the elevator, all three of the officers tried to trip us. On my way back to the bullpen, the prison trustee jailer, who was white, asked me what happened. I said, "Nothing." After I got into the bullpen, the other prisoners asked me what had happened also. I said that I was beaten on the elevator while coming back to the bullpen. My nose was still bleeding heavily at this time. They asked me did I know who did it. I said, "No." They asked me to describe him. I said he was a tall man, about 5'11", weighing about 210 pounds. They said, "Oh, we know him." I was told that his name was Allen Moore, a deputy sheriff of Hinds County. They asked me whether or not I was going to do anything about it, and I told them that I would like to see a lawyer about this. I then wrote a letter to a member of the Jackson Nonviolent Movement telling him what had happened, and gave it to one of the prisoners soon to be released. The next day, May 23rd, Jess Brown, an attorney, came to see me, asking me to tell him what had happened. I told him my story and he asked me whether or not I wanted to file a complaint. I told him that I did want to do so. He told me that he would do everything he could for both Luvaghn Brown and me. On May 24th I was still in the bullpen. That morning, when my nose was still hurting me quite badly, I asked the guard for some medication, and he said that he would see about it. He never did return with anything for my nose. After breakfast on the 27th, I was told by the jailer to get my bed roll as they were going to take me to the Hinds County Farm. The jailer took me to the office where we met Mr. Mack [illegible] I believe to be the superintendent of the Hinds County [illegible]

them, and had slowed down and turned to wait for directions as to which way to go. Amos said, "Go along, nigger. When a white man tell you to do something, you do it." After we got to the car we were told to get in the back seat and be quiet. On the way to the county farm, Mr. Thomas asked our names and where we were from and what we did and where we went to school. When we reacged the farm we were signed in as "Freedom Riders." After we filled out the entry forms we were put in the same cell. We were given striped uniforms rather than the regular uniform of a white T-shirt and blue overalls. We were the only ones I saw who had a complete outfit of stripes. After about ten minutes the prisoners came by our cell on their way to lunch. We saw one friend of ours and began to talk with him. When Mr. Thomas came he asked us what we were talking about. We said, "Nothing much. He's just a friend." And the guard said, "If you have anything to talk about, you say it to me. You people are not coming down here to change things. Now this is a rule. When I tell you to do something, you do it or else. When I tell you to grab a hoe, you get it. If I tell you to grab a sleng blade (scythe) you do it. You address the guards as captain. You address the other prisoners as Mister. If you work, then everything will be alright." With Mr. Thomas was an Officer Broom. I told him that he wouldn't have any trouble out of us. He said, "O.K., and then everything will be alright." On May 26th, in the morning after the road gang left, we were told by Officer Broom more of the rules. He then took us to the front of the supply house. With him were three Negro prisoners and one guard named Keith. Keith was standing there with a large stick, about one foot long and about an inch thick. Officer Broom told Keith that we were Freedom Riders. Keith said, "I'd like to put this stick around their damn necks." Officer Broom told us to go into the supply house to get a shovel and to follow him. He would tell us what to do. We then went on and helped clean out a ditch. On the 10th of June we received visitors: Mr. Paul Brooks, Mrs. Catherine Brooks, Mr. Dave Dennis, Miss Amelita Redmon, and Mr. Cornell Lowe. After talking to them we were taken back to our cell and about ten minutes later one of the guards called Luvaghn Brown to the office of Mr. Thomas and told him that he knew that none of the visitors were relatives of his. He advised Luvaghn Brown to write a letter and tell them not to come back. Then he also assigned us both to a truck to go out and work on the road gang. I was assigned to Officer Keith's truck, and Luvaghn Brown was assigned to Officer Wright's truck. On or about the 12th of June we were working on a right-of-way. Officer Keith told me to work harder than any of the others. He also said, "You damn nigger, when I say work, I mean work." About an hour later he told me to stop working and come go with him. He called three other Negro prisoners and he had a hose pipe in his hand. The hose pipe was made of hard rubber, about 6 feet long and approximately one inch thick. He told the prisoners, whose names were PeeWee or James Conway, Hugh, and W.C., to hold me down on the ground with my pants down while officer Keith would beat me. After hitting me about seven times while I was face down on the ground, Officer Keith told me to get back to work. I said, "Why did you whip me?" He said, "Shut up, nigger, and go back to work." After that I went back to work and nothing happened for the rest of the day. On or about the 28th of June, while on the road gang, we were moving logs, two men to a log. Officer Keith told me to get a log my myself. I told him that I couldn't move one by myself. He said, "You damn nigger, move that log." I told him again that I couldn't move it by myself. Then he started to hit me across the back with a stick about one inch thick and three feet long. He hit me about ten times across the back. I asked him to stop hitting me and he stopped. He said, "O.K., nigger, I'll get to you later." At the end of the day, when we returned to the county farm, I was called to [illegible] Thomas' office. Mr. Thomas said, "Jesse Harris, you are committed to Hinds County Jail." I asked, "What?" and said, "What am I committed for?" He ordered me to get in the car." [illegible]

told me to get in, and I asked, "What did I do?" He said, "Nigger, just shut up and pull off your clothes and get inside." So I got inside. After staying in there for about thirty hours with bread and water having been given to me four times, I was let out. The last time that they brought me bread and water I told the guard that my side was hurting me and that I had a bad headache from the heat. The guard's name was Kelly, and he came back about three minutes later and opened the door and let me out. He put me in a cell, I think a maximum security cell. I stayed there until Saturday afternoon around 1 p.m. Mr. Thomas came and put handcuffs on me and took me back to the Hinds County Farm. After we reached the farm, he said, "I don't want any more trouble out of you." I said, "Yes sir." The next Monday, I was put back on the road gang. I was told by Guard Keith to work harder than anybody else. I made it through the rest of the day without any further incident. Even though I wasn't beaten anymore, the guard was always cursing and riding me about working hard. The only other prisoner he bothered as much as he did me was a young man who was mentally retarded. However, other prisoners are constantly being beaten and intimidated. Beatings occur regularly with a leather strap about 4 feet long, 6 inches wide, and 1 inch thick.

Signed Jesse Lee Harris
Jesse Lee Harris

Sworn to and subscribed before me this
9th day of July, 1962.

Signed: _____
B.H. Dansby
Notary Public

First Judicial District of Jackson, Miss.

IN THE UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF COLUMBIA

ROBERT MOSES, SAM BLOCK, CHARLES McLAURIN, CHARLES COBB, JESSE HARRIS, HOLLIS WATKINS, LAFAYETTE SURNEY and WILLIAM HIGGS,	:	
Plaintiffs,	:	
v.	:	
	:	NO. _____
ROBERT F. KENNEDY, Attorney-General of the United States and J. EDGAR HOOVER, Director of Bureau of Investigation of the United States of America,	:	
Defendants.	:	

COMPLAINT

Jurisdiction

1. Jurisdiction is based upon Title 28, Sect. 1343(3), U.S. Code, and Title 28, Sect. 1361, U.S. Code.

Nature of Cause of Action

2. This is an action in the nature of mandamus to compel the defendants, the Attorney General, and the Director of the Bureau of Investigation of the United States of America, to perform duties owed to plaintiffs and to the class which they represent, i.e., to protect plaintiffs and their class from deprivation of their constitutional rights by the investigation, arrest, and prosecution of offending law enforcement officers of the state of Mississippi and of its political subdivisions, and offending residents of the state of Mississippi acting in concert and conspiracy.

Plaintiffs

3. Plaintiff Robert Moses is a citizen of the state of New York, is a member of the Negro race, and resides at 901½ Nelson St., Greenville, Miss.

4. Plaintiff Sam Block is a citizen of the state of Mississippi, a member of the Negro race, and resides at 807 Rear Miller St., Greenwood, Miss.

5. Plaintiff Charles McLaurin is a citizen of the state of Mississippi, a member of the Negro race, and resides at 909 Reden St., Ruleville, Miss.

6. Plaintiff Charles Cobb is a citizen of the state of Massachusetts, is a member of the Negro race, and resides at 901½ Nelson St., Greenville, Miss.

7. Plaintiff Jesse Harris is a citizen of the state of Mississippi, is a member of the Negro race, and resides at 909 Reden St., Ruleville, Miss.

8. Plaintiff Hollis Watkins is a citizen of the state of Mississippi, a member of the Negro race, and resides at 714 Rose St., Jackson, Miss.

9. Plaintiff Lafayette Surney is a citizen of the state of Mississippi, a member of the Negro race, and resides at 901½ Nelson St., Greenville, Miss.

10. Plaintiff William Higgs is a citizen of the state of Mississippi, a member of the Caucasian race, and resides at 951 Terrace Court, Jackson, Miss.

Defendants

11. Defendant Robert F. Kennedy is the Attorney General of the United States of America, a resident of the District of Columbia, with offices in the Department of Justice Building, Washington, D.C.

12. Defendant J. Edgar Hoover is the Director of the Bureau of Investigation of the United States of America, is a resident of the District of Columbia, with offices in the Department of Justice Building in Washington, D. C.

13. Defendants are being sued in their official capacities.

The Factual Situation

14. All plaintiffs have been actively working in a voter registration drive in the state of Mississippi, to register Negro citizens of the United States of America and of Mississippi.

15. Plaintiff Robert Moses was beaten in Liberty, Miss., in the fall of 1961 while taking two Negro farmers to the courthouse to register. County officials in Liberty played a part in this act which resulted in severe injuries to plaintiff's head. This action resulted in the intimidation of prospective Negro voters in Smite County.

In the summer of 1962 plaintiff Moses passed out leaflets in Indianola, Miss. urging Negroes to register to vote. Plaintiff was arrested by local law nforcement officers. He was prosecuted and convicted for this activity under the name of passing out handbills without a permit.

16. Plaintiff Sam Block, while engaging in Negro voter registration activity in Greenwood, LeFlore County, Miss., has been repeatedly threatened, arrested, and jailed by the local law enforcement officials for this activity. During the summer of 1961, plaintiff Block and two other voter registration workers barely escaped from a white lynch mob, early on the morning of August 16, 1962, out of a second-story window. The mob was guided by and assisted by the local law enforcement officials. Plaintiff Block immediately contacted Mr. John Doar of the Civil Rights Division of the United States Department of Justice, who told plaintiff Block that the Justice Department could not act until someone was hurt and therefore denied plaintiff Block's request for help. Plaintiff Block has continued to suffer at the hands of the local law enforcement officers. The Justice Department, though continually requested to prevent these actions by local law enforcement officers has failed and refused to do so.

17. Plaintiff Charles McLaurin was recently arrested by local law enforcement officers in Clarksdale, Coahoma County, Miss. for taking Negroes to the courthouse to register. The voter registrar pointed out plaintiff to the police.

Plaintiff McLaurin was also arrested, prosecuted, and convicted for passing out leaflets urging Negroes to register to vote in Indianola, Sunflower County, Miss., by local law enforcement officers under the name of passing out handbills without a permit.

Plaintiff McLaurin was also arrested and dragged off the steps of the Federal Building in Jackson, Miss., this summer by city policemen and taken to jail and convicted for breach of the peace. Federal deputy marshals, agents of the F.B.I. and U.S. Assistant District Attorneys were in the building, but they made no effort to prevent his arrest. It was on U.S. property under the exclusive jurisdiction of the U.S. government at all times.

18. Plaintiff Charels Cobb has been arrested, threatened, and harrassed during the last three months by the Mayor and other law enforcement officials in Rulesville, Sunflower County, Miss., to prevent plaintiff from continuing to register Negro voters. Some of plaintiff Cobb's associates have been ambushed with firearms and have barely escaped being killed. One associate was shot in the head, but survived. Attention has been called to this latter incident by the President of the United States.

19. Plaintiff Jesse Harris on June 20, 1962, was arrested and charged with contempt of court for sitting on the white side of the courtroom of the Hinds County Court in Jackson, Mississippi. Plaintiff was sentenced to pay a $100 fine and to serve 30 days at the Hinds County Penal Farm, where he was beaten by the guards because of his participation in voter registration and other civil rights activities. The F.B.I. has investigated this incident, but both it and the Justice Department has failed and refused to take any action. Plaintiff Harris is, at present engaged in voter registration activity and is constantly being intimidated by local

law enforcement officials.

20. Plaintiff Hollis Watkins while peacefully carrying a sign protesting segregation and the arrest of Brenda Troois, a fellow student, was arrested along with 115 other Negro public school children on October 4, 1961, and charged and convicted of breach of peace. Plaintiff Watkins is currently engaged in Negro voter registration and segregation protest activity and is being intimidated by local law enforcement officers.

21. Plaintiff Lafayette Surney has been working for the last five months in Negro voter registration activity in the Delta region of the state of Mississippi. Plaintiff has been and is being arrested, threatened and intimidated by local law enforcement officers for his participation and his activity.

22. Plaintiff William Higgs was arrested by the city and county police in Clarksdale, Coahoma County, along with four college students, one of whom was a Negro girl in June, 1962. Plaintiff Higgs was in Clarksdale in the capacity of legal counsel to the congressional campaign of Merril W. Lindsay, the first Negro Congressional candidate in this area in this century. Plaintiff Higgs was arrested without charges, was not taken before any magistrate, had his life threatened and was held incommunicado for more than twenty hours.

23. The defendants' agencies, the Department of Justice and the Federal Bureau of Investigation, have investigated and have been fully informed through plaintiffs and many others of the above described incidents and conditions, all of which were willfully done by local law enforcement officers to deprive Negroes of their constitutional rights. The defendants' agencies have been repeatedly requested to arrest and prosecute the offending local and state law enforcement officers in the state of Mississippi, but have, in all cases, failed and refused to do so. In all cases, defendants' agencies could have been, and in most cases, were notified in advance by plaintiffs and others preparing to exercise

their constitutional rights under threat of action by local law enforcement authorities depriving plaintiffs and others of their constitutional rights. On the spot action by defendants' agencies, particularly the Federal Marshalls and the agents of the F.B.I. could have prevented and can prevent these incidents.

Statement Of Cause of Action

24. The defendant Robert F. Kennedy, Attorney General of the United States of America, is the head of the U. S. Department of Justice and directs the activities of U. S. Marshals, U. S. District Attorneys, and the Civil Rights Division of the Dept. of Justice (Title 28 U.S.C., §547(c) and §507(b)). Defendant J. Edgar Hoover, Director of the Bureau of Investigation of the United States of America, directs the activities of the agents of the Bureau.

The U. S. Marshals, and their deputies, the agents of the F.B.I., the U. S. District Attorneys are authorized and required by law to arrest, imprison, and institute prosecutions against all persons who willfully subject any inhabitant of the State of Mississippi to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States. (Title 42, U.S.C., §§1987, 1986; 18 U.S.C. §§242, 241; 28 U.S.C., §§3052, 3053).

Defendants and their agents have been repeatedly requested by plaintiffs and others to perform the statutory duties stated in the preceding paragraph, and they have refused and failed to do so. As described in paragraphs ____ to ____, supra, plaintiffs and others have been and are being deprived of their constitutional rights by Mississippi state and local law enforcement officers. Plaintiffs bring this action in the nature of a writ of mandamus to compel defendants to perform their above statutory duties.

Defendants and their agents are in possession of the results of extensive investigations by the F.B.I. and other Federal agencies describing in great detail the incidents set out in paragraphs ___ to ____, supra.

Prayer for Relief

25. Plaintiffs hereby request of the Court an order:

(A) directing the defendant Robert F. Kennedy, Attorney General of the U.S.A. to

1) direct the United States District Attorneys for the Northern and for the Southern Districts of Mississippi to institute prosecutions against those state and local law enforcement officials responsible for the deprivations of plaintiffs rights described above;

2) directing these District Attorneys to continue to institute prosecutions against local state law enforcement officials who are responsible for the deprivation of the constitutional rights of plaintiffs and other citizens of Mississippi under similar circumstances;

3) directing the U.S. Marshals in the State of Mississippi to arrest and cause to be imprisoned those state and local law enforcement officials responsible for the deprivation of plaintiffs rights above;

4) directing the U.S. Marshals in the State of Mississippi to continue to arrest and cause to be imprisoned state and local law enforcement officials who are responsible for the deprivation of the constitutional rights of plaintiffs and other citizens of Mississippi under similar circumstances;

5) directing the U.S. Marshals in the State of Mississippi whenever possible to arrest and cause to be imprisoned those state and local law enforcement officials who are in the act of depriving plaintiffs and other citizens of Mississippi of their constitutional rights under similar circumstances, so as to effectively stop the arrests and prosecutions of plaintiffs and other citizens of Mississippi by state

and local law enforcement officials which prevent plaintiffs and others from exercising their constitutional rights;

(B) directing J. Edgar Hoover, the Director of the F.B.I. to instruct the agents of the F.B.I. in Mississippi to arrest and cause to be imprisoned those state and local law enforcement officers of the State Mississippi who deprive or who are in the act of depriving plaintiffs and other citizens of Mississippi of their constitutional rights and

(C) granting such other and further relief as is appropriate and necessary.

William L. Higgs
Box 4863
Jackson 6, Mississippi

Attorney for Plaintiffs

Rashlin

THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JOSEPH A. JORDAN, JR.
E. A. DAWLEY, JR.
L. W. HOLT

Plaintiffs

CIVIL CASE NO._____

vs.

J. C. HUTCHESON, Chairman
Virginia's Legislative Committee on Offenses Against the Administration of Justice
112 E. Hicks Street
Lawrenceville, Virginia

WILLIAM KING, Esq.
Counsel for the Committee
915 Mutual Building
Richmond 19, Virginia

HONORABLE CHARLES LEAVITT
City Sergeant
Public Safety Building
Norfolk, Virginia

COMMITTEE ON OFFENSE AGAINST
THE ADMINSTRATION OF JUSTICE
Capitol Bldg.
Richmond, Virginia
c/o J. C. Hutcheson,

defendants

a suit to STOP A CONSPIRACY

SEEKING TO MAINTAIN "WHITE SUPREMACY"

in Virginia . . .

and to REQUIRE CRIMINAL PROSECUTION

OF THOSE IN THE CONSPIRACY.

Counsel:

J. A. Jordan, Jr.
E. A. Dawley, Jr.
L. W. Holt
721 E. Brambleton Avenue
Norfolk (10), Virginia

Henry Halvor Jones
Simon Lazarus Cain
815 Fifth Street, N. W.
Washington (1), D. C.

JURISDICTION

The jurisdiction of this Court is invoked under the following stautes:

I Title 42, Sections 1981 and 1983 of the United States Code

II Title 28, Sections 1331, 1343(3), 2201, 2202, 2281, 2284 of the United States Code

III Title 18, Sections 241 and 242 of the United States Code

Now come the Complainants--who sue for themselves and in behalf of others similarly situated--and set forth the following case.

NATURE OF SUIT

1. That this suit is for a (a) declaratory judgment, (b) preliminary and permanent injunction to restrain the defendants, their co-workers, agents, assigns, successors in office and all persons having notice of the action of this Court from further harassment, intimidation and other unlawful acts--done under color of law--as part of a conspiracy to prevent those who oppose Virginia's state-enforced and condoned racial segregation from opposing that segregation through use of the courts.

2. Restraint of these practices is sought on the grounds that the practices are contrary to the First and Fourteenth Amendment of the United State Constitution and are the end product of a conspiracy to preserve racial segregation and prevent black men from opposing it.

THE PLAINTIFFS

3. Plaintiffs are citizens of the United States, The State of Virginia and the City of Norfolk.

4. Plaintiffs are members of the Virginia State Bar and are practicing attorneys in Virginia as the law firm Jordan, Dawley and Holt.

5. Plaintiffs are members of the so called "Negro Race".

6. Plaintiffs have served and are serving as attorneys for various groups and persons who have sought by means of sit-ins, stand-ins, picketing, parading, going to jail and litigation to abolish racial barriers which relgate Afro-Americans to inferior roles and unequal positions in the use and enjoyment of facilities in existence throughout Virginia.

7. Among the organizations served by the plaintiffs are the following: The Congress of Racial Equality, The Southern Christian Leadership Conference, The Lynchburg Improvement Association, the Petersburg Improvement Association and groups referred to as the Portsmouth Improvement Association and The Hopewell Improvement Association. All of the aforementioned associations and groups are actively engaged in attacks on racial segregation in Virginia and seek to destroy all racial segregation at once.

THE DEFENDANTS

8. The Defendant, J. C. Hutcheson, is an avowed supporter of the principals of inferiority of the so-called Negro and dedicated to the perpetuation of the present pattern of racial discrimination against all black citizens classified as "Negro". Hutcheson is the chairman of the committee of the Virginia legislature known as "The Committee on Offenses Against The Administration of Justice".

9. William King, like Hutcheson, has a similar dedication to white supremacy and is the counsel for the Committee.

10. The Defendant, Charles Leavitt, is the City Sergeant for the City of Norfolk, Virginia and the one who served processes under the direction of the two above-named defendants.

THE INJURY COMPLAINED OF . . .

11. The public policy of the State of Virginia is one of maintenance, enforcement and promulgation of the practices of racial discrimination and racial segregation.

12. As a result of lawful use of the federal courts in the State of Virginia to remove racial barriers in the use of public facilities--especially schools--the elected officials of the State of Virginia (who like the defendants are all dedicated to racial segregation) passed laws as part of the conspiracy to intimidate, discourage and impede the use of the courts as a means of ending unconstitutional practices of racial segregation.

13. As part of the conspiracy and program of destroying those who oppose segregation, the Virginia General Assembly passed laws creating the Boatwright Committee and its present successor THE COMMITTEE ON OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE. Hutcheson and King are members and instruments of this committee.

14. The sole function of this Committee-- and its predecessor-- has been to investigate, harass, intimidate and urge the prosecution of those lawyers who are willing to handle cases which may result in an end to some of the forms of racial segregation and racial discrimination so prevalent in Virginia.

15. The Committee has not and cannot investigate lawyers who are representing clients who seek to impose racial segregation and/or racial discrimination. The reason for this being that there have been no such suits. The additional reason being that no such suits by private individuals are needed. The various City, county and state officials have been and are willing to do all that is necessary to further racial discrimination and racial segregation.

16. Hence, because of the position of the state officials and the absence of suits by private individuals to impose segregation and discrimination where none exist -- all of which is well known to the elected officials of this State--the creation of the Committee headed by the defendant and all legislation in connection therewith is special legislation and an insiduous conspiracy to attack individuals opposed to unconstitutional racial practices.

17. In furtherance of the avowed purpose of this conspiracy and the committe relatives, friends and clients of the Plaintiffs have been investigated by the defendants and their agents.

18. The defendants and their agents have urged and asked the clients of Jordan, Dawley and Holt to abandon, disavow and discard Jordan, Dawley and Holt as their attorneys.

19. That on or about the 7th day of September the defendants and their agents did "raid" the offices of the Plaintiffs and their clients seeking to gather confidential papers and notes in violation of the attorney-client relationship.

20. That the defendants and their agents did further state, publish and cause to be published statements and papers pointing out Jordan, Dawley and Holt as violator of the laws... all to detriment of the law practice and public esteem of Jordan, Dawley and Holt.

21. The defendants then stated that they intend to continue harassing and "raiding" the offices of Jordan, Dawley and Holt in furtherance of the purpose of destroying them as tools for implementing the desire of black citizens to be free of state imposed conditions of inferiority.

22. That all the actions of this conspiracy and abuse of power by the defendants and their agents is done under color of laws.

23. That your plaintiffs have suffered and are suffering irreparable harm by reason of the past conduct and threatened conduct of the defendants done under color of law. And that irreparable harm will be suffered by the firm of Jordan, Dawley and Holt both as an entity and as individuals unless this court will grant injunctive relief.

24. That there is an actual controversy between the parties to this suit.

25. That the value of the civil liberties and rights sought to be enforced by this suit are in excess of $1,000,000.00, exclusive of costs and interest.

PRAYER FOR RELIEF:

WHEREFORE, the Plaintiffs pray that this Court will --

A. Advance this cause on the docket and provide a speedy hearing of the matter.

B. Render an immediate temporary injunction to restrain the defendants from taking any further unlawful action to harass and intimidate the three plaintiffs (Joseph A. Jordan, Jr., E. A. Dawley, Jr., and L. W. Holt) and their many clients throughout the State of Virginia, namely, those served with subpoenas and writs by the defendants on the 7th day of September 1961.

C. After a hearing grant a permanent injunction against the individuals.

D. Award the defendants their costs expended herein and nominal damages of $1.00 apiece.

E. Order the prosecution of defendants Hutcheson and King for violation of 18 U.S.C., sections 241 and 242.

F. Grant such other and further relief, both specific and general, as the plaintiffs shall show themselves entitled, the nature of the case shall require, or to the Court shall seem proper and meet.

Joseph A Jordan Jr
JOSEPH A. JORDAN, JR.

E A Dawley Jr.
E. A. DAWLEY, JR.

L. W. Holt
L. W. HOLT

STATE OF VIRGINIA, CITY OF NORFOLK, to-wit:

The undersigned affiants who are plaintiffs in the aforementioned and above civil action, having been first sworn, each for himself deposes and says that he has read the foregoing complaint and knows the contents thereof, and verily believes the matters and things therein set forth to be true to the best of his knowledge and belief.

WITNESS THE FOLLOWING SIGNATURES:

Joseph A Jordan Jr

E A Dawley Jr.

L W Holt

Subscribed and sworn to before me this 16th day of September, 1961.

E. N. Fields
NOTARY PUBLIC

My commission expires:
July 28, 1963 19 .

COUNTY COURT FOR FIRST JUDICIAL DISTRICT
DISTRICT OF HINDS COUNTY

----------x

THE STATE OF MISSISSIPPI, :

Plaintiff, :

-against- :

PERCY ELLIS SUTTON et al, :

Defendants. :

----------x

STATE OF MISSISSIPPI)
COUNTY OF HINDS)ss:

WILLIAM M. KUNSTLER, being duly sworn, deposes and says:

1. I am one of the attorneys for the above-mentioned defendants, all of whom have been convicted of violating Section 2087.5, Mississippi Code of 1942, anno., as amended, and whose appeals are presently pending in this court. I am making this affidavit in support of their application for 1) a continuance of the aforesaid appeals until the determination of a petition for removal of these causes to the United States District Court for the Southern District of Mississippi, or, in the alternative, 2) for a trial de novo of one or several of these cases with a stipulation of facts in lieu of a trial of each one, with the understanding that all of the said defendants shall be bound by the result or results thereof, or, in the alternative, 3) the establishment of an orderly procedure for the trial of the aforesaid appeals so that they may be scheduled for the days on which they will actually be tried, and that, pending the establishment of such a procedure, the defendants' attorneys be permitted to appear for them at any and all calls of the calendar of this court concerning the defendants.

2. All of the aforementioned appeals involve the identical issues of law and fact. Each defendant was convicted

of the same offense - namely, a violation of the said Section 2087.5 by entering segregated facilities at various transportation centers within the corporate limits of the city of Jackson, and failing to leave same when directed to do so by police officers.

3. Simultaneously with the filing of this motion, defendants, through their attorneys, are filing a petition for removal of these causes to the United States District Court for the Southern District of Mississippi, pursuant to §1443, Title 28, United States Code.

4. Since the more than 187 defendants who are involved in these appeals are scheduled to appear in this court on August 14, 1961, it is respectfully requested that, until the determination of the above removal petition, their cases be adjourned sine die. Otherwise, defendants will be forced to travel to Jackson at considerable expense, only to find their cases transferred to the federal court and scheduled for later trial.

5. I am attaching hereto an affidavit of JACK H. YOUNG, Esq., one of the attorneys for the defendants, setting forth the results of a conference with the Jackson City Prosecutor. Since all of the within cases involve the identical issues and since most of the facts can be stipulated, there is no reason why a test case involving one or several of them cannot be consented to by all concerned. All the defendants will agree to be bound by the result of the aforesaid test case. It is felt that such a procedure would save this court time and needless expense and resolve the issues raised in these prosecution expeditiously.

6. In the event that this court decides not to grant the above requests for a continuance and for the trial

of a test case, then it is respectfully urged that it set these cases down for trial on a schedule that will realistically approximate the day on which each one can be expected to be reached. All of the defendants have posted bail and will be available for their trials as scheduled by this court. In this manner, the court will be free to clear its regular calendar and try the within cases in a convenient manner.

7. The lower court took the position that the swift arrests and convictions of the defendants had prevented a repetition of the bloody riots which accompanied similar incidents in Alabama. To bring all of these young people, who are both white and Negro, into Jackson at one time, is to lay the ground work for violence, a possibility which everyone conserned with these cases must keep in mind. It seems to your deponent that any of the above procedures suggested by him would both prevent any bloodshed and dispose of the within cases without pre-empting this court's calendar for many months to come.

8. In the event that this court does not adopt any of the solutions suggested by counsel, it is respectfully urged that counsel be permitted to appear for each defendant until his or her case is actually ready for trial. Almost all of the defendants are young people who have been convicted of a minor offense. In addition, sufficient bail has been posted to insure their presence when their appeals are to be heard. It does not serve any useful purpose to have all of them come into Jackson en masse before their individual trials have been scheduled.

9. The defendants are eager to cooperate with this court in any way which will assist it in trying these cases expeditiously. The above suggestions are respectfully

proffered in the hopes that one or more of them may be utilized to save this court's valuable time, to dispose of these appeals in the most practical manner, and to prevent the occurence of any unfortunate incidents.

WILLIAM M. KUNSTLER

Sworn to before me this
day of August, 1961

filed 9/[illegible]/61

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SARGENT PITCHER, JR.,
BRYAN CLEMMONS, and
WINGATE WHITE,

Defendants.

CIVIL ACTION NO. 2516

AMENDED COMPLAINT

The United States as a claim against the defendants alleges that:

1. This is an action for an injunction to prevent an unlawful and unconstitutional burden upon and interference with interstate commerce by motor carrier in violation of Section 8, Article I, of the Constitution of the United States and the laws of Congress passed pursuant thereto, as more specifically set out hereinafter.

2. This court has jurisdiction of this action under 28 U.S.C. 1345 and 28 U.S.C. 1331.

3. Sargent Pitcher, Jr., is District Attorney of East Baton Rouge Parish, Louisiana, and, as such, has a duty to prosecute all violations of the criminal laws of Louisiana occurring within East Baton Rouge Parish. He resides in Baton Rouge, Louisiana.

4. Bryan Clemmons is Sheriff of East Baton Rouge Parish, Louisiana. As such, he is responsible for enforcing the laws of Louisiana within East Baton Rouge Parish and has authority to arrest persons who violate those laws. He resides in Baton Rouge, Louisiana.

5. Wingate White is Chief of Police of the City of Baton Rouge. As such, he is responsible for enforcing the laws of Louisiana within the City of Baton Rouge and has authority to arrest persons who violate those laws. He resides in Baton Rouge, Louisiana.

6. The Greyhound Corporation (hereinafter referred to as Greyhound) is a common carrier by motor vehicle within the meaning of 49 U.S.C. 303(a)(14)

engaged in the transportation of passengers to, from and through Baton Rouge, Louisiana. Greyhound holds a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing and requiring it to provide interstate bus transportation to and from Baton Rouge.

7. Greyhound owns, operates and maintains a terminal in Baton Rouge for the use of its bus passengers. The facilities in the terminal include a waiting room and reception room facilities, rest rooms, eating and drinking facilities, and ticket sales and baggage handling facilities.

8. Under the provisions of Part II of the Interstate Commerce Act, including 49 U.S.C. 303(a)(19) and 49 U.S.C. 316(d), Greyhound is required to make the facilities of its terminal available without any undue or unreasonable preference, advantage, prejudice or disadvantage, nor any unjust discrimination to any particular persons. These statutory requirements preclude Greyhound from enforcing racial segregation in any of its terminal facilities or from maintaining separate facilities for the use of passengers of different races.

9. Greyhound is presently maintaining and operating its terminal in Baton Rouge in accordance with the laws of the United States referred to in the preceding paragraph.

10. Part VII (Sections 1301 through 1305) of Title 45 of the Louisiana Revised Statutes, the text of which is attached hereto as Appendix A, requires that common carriers of passengers maintain separate waiting room, reception room, toilet and drinking water facilities for interstate passengers of the white race; that a separate set of such facilities be provided for all other passengers whether traveling intrastate or interstate; and that any person or carrier violating its provisions shall be punished by fine and imprisonment. Each day such person or carrier refuses or fails to comply with the Louisiana statutes mentioned in this paragraph is considered a separate and distinct offense subjecting such person or carrier to additional fines and imprisonment.

11. The purpose and practical effect of Part VII of Title 45 of the Louisiana Revised Statutes is to require interstate carriers of passengers to provide racially segregated facilities for all passengers, whether traveling in interstate or intrastate commerce.

12. On August 11, 1961, Sargent Pitcher, Jr., sent a letter (a copy of which is attached hereto as Appendix B) to Mr. A. J. Provost, Terminal Manager of the bus terminal maintained and operated by Greyhound in Baton Rouge, advising Mr. Provost of the requirements of Section 1301 of Title 45 of the Louisiana Revised Statutes and requesting his immediate compliance with its provisions. The defendant Pitcher sent a copy of this letter to the defendant Wingate White, Chief of Police of the City of Baton Rouge.

13. The defendants threaten to arrest and prosecute the officers, agents and employees of Greyhound under the purported authority of Part VII of Title 45 of the Louisiana Revised Statutes unless Greyhound maintains racially segregated facilities in its bus terminal in Baton Rouge.

14. Operation by Greyhound of its bus terminal in Baton Rouge on a racially segregated basis would violate the provisions of 49 U.S.C. 316(d) and would constitute an unlawful and unconstitutional burden upon and interference with interstate commerce by motor carrier.

15. Part VII of Title 45 of the Louisiana Revised Statutes is unconstitutional; it is prohibited by Section 1 of Amendment XIV of the Constitution and by Section 8 of Article I of the Constitution.

16. The enforcement of Part VII of Title 45 of the Louisiana Revised Statutes and the arrest and prosecution of the officers, agents and employees of Greyhound for violation of its provisions will cause immediate and irreparable injury, loss and damage to the plaintiff in that it will impose an unlawful, undue and unreasonable burden upon and interference with the free flow of interstate commerce by motor carrier in Baton Rouge and elsewhere within the State of Louisiana. The plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff prays that a district court of three judges be convened pursuant to Sections 2281 and 2284 of Title 28 of the United States Code and that the court adjudge and declare Part VII of Title 45 of the Louisiana Revised Statutes to be unconstitutional, null and void insofar as it applies to carriers engaged in interstate and foreign commerce

and to terminal facilities which are a regular and integral part of such commerce.

Plaintiff further prays that this court enter an order without notice temporarily restraining the defendants, their agents and employees from enforcing or attempting to enforce Part VII of Title 45 of the Louisiana Revised Statutes or from otherwise interfering in any way with the lawful operations of interstate motor carriers; that a preliminary injunction be entered pending a trial on the merits to be made permanent after trial, such injunction to enjoin defendants as prayed for above; and, that this court grant such further relief as the interest of justice may require.

UNITED STATES OF AMERICA,
Plaintiff

By: _____
ROBERT F. KENNEDY
Attorney General of the United States

_____
M. HEPBURN MANY
United States Attorney

_____
BURKE MARSHALL
Assistant Attorney General

_____
JEROME K. HUTCHISON
Attorney, Department of Justice

VERIFICATION

The statements contained in the above Complaint are true.

/s/ M. Hepburn Many

Sworn to and subscribed before
me this 6th day of September,
1961.

/s/ Gene S. Palmisano
Notary Public

My commission expires at death.

APPENDIX A

LOUISIANA STATUTES - TITLE 45

Part VII. Waiting Room Facilities

§ 1301. Accommodations for white passengers traveling intrastate.

All common carriers of passengers for hire, providing waiting room and reception room facilities, shall provide separate accommodations for white passengers traveling in intrastate travel, which accommodations shall bear a sign on which shall be painted or shown in bold letters the words, "WHITE WAITING, INTRASTATE PASSENGERS." Acts 1956, No. 27, § 1.

§ 1302. Accommodations for other passengers traveling intrastate or interstate.

All such common carriers providing waiting room and reception room facilities shall provide separate accommodations for all other passengers whether traveling in intrastate or interstate travel which shall bear a sign on which shall be painted or shown in bold letters the words, "WAITING, INTERSTATE PASSENGERS AND COLORED INTRASTATE PASSENGERS," Acts 1956, No. 27, § 2.

§ 1303. Separate toilets and separate facilities for drinking water.

There shall also be provided where such accommodations are furnished, separate toilets and separate facilities for drinking water for white intrastate passengers; and separate toilets and separate facilities for drinking water for all other passengers whether in intrastate or interstate travel which shall be designated by signs the same as those provided for waiting or reception facilities. Acts 1956, No. 27, § 3.

§ 1304. Equality of accommodations.

The accommodations furnished shall be equal for both white and colored passengers. Acts 1956, No. 27, § 4.

§ 1305. Injunction against violations; penalty; each day of violations as separate offense.

A. The district attorney of the judicial district or parish wherein a violation of this Part occurs shall institute action in the state district court to enjoin such violation, for and in the name of the state of Louisiana.

B. Any person or common carrier violating the provisions of this Part shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by fine of not less than one hundred dollars or more than five hundred dollars and imprisonment in the parish jail for not less than thirty days or more than six months.

C. Each day that such person or carrier refuses or fails to comply with the provisions of this Part shall be considered a separate and distinct offense. Acts 1956 , No. 27, §§ 5-7.

APPENDIX B

DISTRICT ATTORNEY
NINETEENTH JUDICIAL DISTRICT
OF LOUISIANA

Parish Court House
Baton Rouge, Louisiana

Sargent Pitcher, Jr.
District Attorney

August 11, 1961

Mr. A. J. Provost
Terminal Manager
Greyhound Bus Station
Baton Rouge, Louisiana

Dear Mr. Provost:

It has come to the attention of this office that you are no longer providing separate waiting room and reception facilities and toilet and drinking facilities for white intrastate passengers and all other passengers as required by Louisiana Revised Statutes 45:1301, et seq, a photostatic copy of which pertinent statute is attached hereto for your information.

We respectfully direct your attention to the penalty provision of this statute, being 45:1305. We must request your immediate compliance with the State law in this regard.

Very truly yours,

SARGENT PITCHER, JR.
District Attorney

SPJr:ck

cc: Mr. H. Vance Greenlit
Southern Greyhound Lines
General Office
Chamberly, Georgia

cc: Chief of Police
City of Baton Rouge

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS PART IIB

THE PEOPLE OF THE STATE OF NEW YORK

-against-

Docket Nos.

ALBERT ADKINS, MARSHALL BROWN, AND
LANE PERDU

Defendants

DEFENDANTS' PRE-TRIAL MEMORANDUM OF LAW

SUMMARY OF POINTS PRESENTED

As to the Charges of Violation of § 722.

POINT I - SECTION 722(2) and(4) DO NOT APPLY UNLESS A BREACH OF THE PEACE, i.e., VIOLENCE OR THE THREAT OF VIOLENCE OCCURS, A MERE INCONVENIENCING IS NOT ENOUGH.

POINT II -PEACEFUL, NON-VIOLENT PICKETING TO EXPRESS VIEWS IS CONSTITUTIONALLY PROTECTED "FREE SPEECH"

POINT III-BECAUSE § 722 IS A PENAL STATUTE A WRONGFUL INTENT IS A NECESSARY ELEMENT OF THE OFFENSE.

POINT IV -A STATUTE WHICH VESTS DISCRETION IN POLICE OR OTHER ADMINISTRATIVE AUTHORITIES IS UNCONSTITUTIONALLY VAGUE AND VIOLATES DUE PROCESS.

POINT V - THE WORLD'S FAIR PINKERTON GUARDS HAVE NO AUTHORITY TO ARREST FOR A MERE VIOLATION.

POINT VI -SECTION 1851 DOES NOT APPLY TO NON-VIOLENT, NON-COOPERATION WITH A PERSON'S OWN ARREST.

POINT VII-EVEN IF § 1851 IS APPLICABLE NON-VIOLENT, NON-COOPERATION IS NOT RESISTANCE.

POINT VIII IF THE OTHER CHARGES FAIL, THE § 1851 CHARGE MUST, AS A MATTER OF LAW, BE DISMISSED.

As to Charges of Violation of § 2036:

POINT IX - SECTION 2036 OF THE PENAL LAW APPLYING TO UNLAWFUL INTRUSION DOES NOT APPLY TO PERSONS WHO ENTERED LAWFULLY,

POINT X PERSONS WHO ENTER AND REMAIN ON THE GROUNDS OF THE WORLD'S FAIR UNDER A COLORABLE CLAIM OF RIGHT LACK THE CRIMINAL INTENT NECESSARY UNDER § 2036.

As To Charges of Violation of § 722:

POINT I

SECTION 722(2) and (4) DO NOT APPLY UNLESS A BREACH OF THE PEACE I.E., VIOLENCE OR THE THREAT OF VIOLENCE OCCURS. A MERE INCONVENIENCING IS NOT ENOUGH.

The Court of Appeals of the State of New York has consistently held that in order for an act to be punishable under either subdivision 2 or subdivision 4 of Section 722 a "breach of the peace" must have occurred. PEOPLE v. CARCEL, 3 N.Y. 2d 327 (1957); PEOPLE v. NIXON, 248 N.Y. 182 (1928); PEOPLE v. MOST, 171 N.Y. 423; PEOPLE v. HARVEY, 307 N.Y. 588 (1954).

In PEOPLE v. CARCEL, supra, the court said, as to what would constitute a breach of the peace:

> "The common law, definition of 'breach of peace', though not controlling, is helpful in ascertaining the nature of the acts proscribed by the statute. In PEOPLE v. MOST, 171 N.Y. 423, 429 breach of peace was defined as a 'distirbance of public order by any act of violence or by any act likely to produce violence, or which by causing consternation and alarm disturbs the peace and quiet of the community'...CANTWELL v. CONNECTICUT, 310 v.s. 296, 308....guided by this definition the courts have indicated that something more than a mere inconveniencing of pedestrians is required to support a conviction under subdivision 2."

PEOPLE v. NIXON, supra, involved one hundred and twenty convictions arising from labor demonstrations. People were parading 4 abreast on a 12 foot wide sidewalk, occupying one-half of it. The regular amount of traffic could barely get through and some pedestrians had to walk in the gutter. The court dismissed the § 722(2) charge saying:

> "...As yet, bad manners have not been made punishable by imprisonment...(T)here is nothing to show that any other person could have regarded the defendants' conduct as a threat or as calculated to coerce or impede anyone. In the absence of evidence, we may not infer that the conduct of the defendants was intended as a threat or could be construed, or was an incentive to violence by others."

In PEOPLE v. NIXON, supra, and PEOPLE v. CARCEL the Court of Appeals carefully pointed out that:

> "Men and women constantly congregate or walk upon the streets in groups, quite oblivious to the fact that to some degree they are thereby causing inconvenience to others using the street."

Thus, although such persons certainly fall within the terms of § 722 (2), if read literally, such a reading would be incorrect. Only if a "breach of the peace" has been occasioned.. that is, "violence", or the "threat of violence" or "alarm" are the acts punishable under § 722.

Furthermore, it has frequently been held that for there to be a conviction under § 722(4) there must have been:

> "...At least a breach of peace which caused a number of persons to congregate." PEOPLE v. KIERAN, 26 NYS. 2d 291(1941); PEOPLE v. LaSISTER, 9 Misc 2d. 518 (1948).

What constitutes a "crowd" under the terms of § 722(4) has consistently been regarded as varying with the circumstances:

> "At best the word is indefinite. Difference in time and place may shape its meaning. A crowd at midnight might not be a crowd at noon. A crowd in a country schoolhouse might not be a crowd in Washington Square, but there is always implied in the word numbers with reference to the hour and location. " PEOPLE v. PHILLIPS, 245, N.Y. 401 (1927)

What would constitute a "crowd" suffieient to violate the statute in the circumstances of a case arising at the New York

World's Fair grounds in the middle of the day is obviously far more than under many other circumstances. In PEOPLE v. KIERAN, supra, a crowd on a public street which grew from 50 to 125 during the course of the arrest was held to be insufficient. The court said that a "multitude" or a "great number of persons" was required.

As the statute is written, the collection of a "crowd" is considered by the legislature to be one way in which a breach of peace might be occasioned. The obvious implication is that the crowd might become unruly and disturb the public order. That newsmen and reporters who act only as observers should not be counted is obvious. Even more apparently, peace officers should not be counted in determining the existence of a crowd. In fact, if sufficient police are present, the possibility of a breach of peace becomes considerably less and the applicability of § 722(4) becomes even more unlikely. EDWARDS v. SOUTH CAROLINA, 372 U.S. 229 (1963); FIELDS v. SOUTH CAROLINA, 375 U.S. 44(1964); COX v. LOUISIANA, 85S Ct. 453(1965).

Furthermore, there is an exception within the terms of § 722(4) for persons "lawfully addressing such a crowd". "Pure Speech" is certainly not the only means of addressing people. It has been throughly established that picketing, marching, and patrolling are also means of expression. CANTWELL v. CONNECTICUT, supra; GARNER v. LOUISIANA, 368 U.S. 157; SCHNEIDER v. IRVINGTON, 308 U.S. 147, EDWARDS v. SOUTH CAROLINA, supra. They should therefore be regarded as outside the scope of the statute.

POINT II

PEACEFUL, NON-VIOLENT PICKETING TO EXPRESS VIEWS IS CONSTITUTIONALLY PROTECTED "FREE SPEECH."

As was just stated in POINT I "Free Speech" as well as "Free Assembly" and the right to petition for a redress of grievances, encompass far more than "Pure Speech". Picketing and similar forms of conduct when used for the valid purpose of expressing grievances, are also "Protected Speech." EDWARDS v. SOUTH CAROLINA, supra. Though the views expressed by the demonstrators may be unpopular as in the EDWARDS case, though they stir people to anger as in the CANTWELL case, they are protected by the First Amendment, to the U. S. Constitution as well as Article 1, § 8 of the Constitution of the State of New York.

This is not to say that fighting words are protected FEINER v. NEW YORK, 340 U.S. 315. But peaceful, non-violent demonstrations provide no threat to the community against which a state may act. EDWARDS v. SOUTH CAROLINA, supra, FIELDS v. SOUTH CAROLINA, supra; COX v. LOUISIANA, supra. It is clear from these cases that though the state may make reasonable traffic regulations, (COX v. NEW HAMPSHIRE, 312 U.S. 569) it could not under a general statute, which in its terms could

include even the most harmless conduct, prevent incidental obstructions arising from the "peaceful expression of unpopular views". In COX v. LOUISIANA, supra, the Supreme Court noted specifically that the sidewalk was obstructed, but said that the conduct of defendants nonetheless, fell within the doctrine of the EDWARDS case that such forms of expression are:

> "...protected against censorshop or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience annoyance or unrest."

In addition, the courts on numerous occasions have held that property having certain public attributes is subject to the First and Fourteenth Amendments, notwithstadning its private form of ownership. MARSH v. ALABAMA , 326 U.S. 501 (1946); WATCHTOWER BIBLE & TRACT SOCIETY v. METROPOLITAN LIFE INSURANCE CO., 297, N.Y. 339 (1948). In MARSH v. ALABAMA, the court said:

> "Ownership does not always mean absolute dominion. The more an owner, for his general advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

That these words are applicable to the grounds of the New York World's Fair was made clear in FARMER v. MOSES, 64 Civ. 1666(1964) in which Judge Tyler said"

> "Upon analysis of the foregoing facts, I find that the Fair Corporation and its operations are so impregnated with and supported by State and City action as to place them within the ambit of the Fourteenth Amendment. This is so even though it may be reasonably inferred that the Fair Corporation does possess certain indicia and aspects of 'private' ownership and dominion."

POINT III

BECAUSE § 722 IS A PENAL STATUTE A WRONGFUL INTENT IS A NECESSARY ELEMENT OF THE OFFENSE.

Picketing resting solely on malice or ill will may be unlawful, but that is not so where it is sought to attain some:

> "...purpose in the eye of the law thought sufficient to justify the harm that may be done to others". ANORA AMUSEMENT CORP.v. DOE, 12 N.Y.S 2d 400 (1939). EXCHANGE BAKERY & RESTAURANT, INC. v. RIFKIN, 245 N.Y. at 263.

Thus if the purpose of the demonstrators is merely the "peaceful expression of unpopular views" they lack the Mens Rea required under the statute. In overturning a conviction based on a Louisiana statute, The Supreme Court in COX v. LOUISIANA, supra, said:

> "In upholding appellant's conviction under the statute, the Louisiana Supreme Court thus construed the statute so as to apply to public assemblies which do not have as their specific purpose the obstruction of traffic."

In other words, persons who intend to express their views and not to obstruct, or otherwise foment a breach of the peace lack the wrongful intent required by the statute.

POINT IV

A STATUTE WHICH VESTS DISCRETION IN POLICE OR OTHER ADMINISTRATIVE AUTHORITIES IS UNCONSTITUTIONALLY VAGUE AND VIOLATES DUE PROCESS.

In COX v. LOUISIANA, supra, nearly 2000 people participated in a Civil Rights demonstration and a hostile crowd gathered. The Louisiana statute against "obstructing passages" under which Cox was prosecuted was similar to § 722(2). The court found that the demonstrators violated the statute as construed by the Louisiana Supreme Court, and that any street parade or demonstration would so violate the statute, but the record indicated that certain parades or demonstrations had been permitted by local authorities, and so, the court said:

> "The situation is the same as if the statute itself expressly provided that there should only be peaceful parades or demonstrations in the unbridled discretion of the local officials. The pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement. A long line of cases in this court make it clear that a statute or municipality cannot 'require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while other ideas may not be....disseminated....

> It is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute."

Thus, although the legislature may have a right to limit parades or demonstrations, in the interests of traffic regulation it may not delegate this power to the arbitrary exercise of administrative personnel, much less to private citizens...

POINT V

THE WORLD'S FAIR PINKERTON GUARDS HAVE NO AUTHORITY TO ARREST FOR A MERE VIOLATION.

In the 16th century in the case of DARCY v. ALLIN, Noy 173, 74 English Reports 1131, the principle was established that:

> "The law knoweth no commandment but by writ, nor no minister to execute the commandments of the law, but the sheriff and the officers under him, for he is the only lieutenant in the time of peace, who is to be guided by the law, and to be controlled, if he follow not the course of the law in the commandments of the King or of the law."

The principle of "popular sovereignty" - Responsibility of government officials to the people at large - was firmly established in our state and federal constitutions. Government power, under our system, must rest with persons who may be held accountable for its use. For this reason the courts have constantly stricken statutes which tend to place public power in private hands, as a violation of "due process", "equal protection" and the constitutional provision that the power to pass laws is vested in the legislature (N.Y. Constitution, Art. 3 § 1).

In FOX v. MOHAWK & HUDSON RIVER HUMANE SOCIETY, 165 N.Y. 517, the Court of Appeals rejected a statute empowering the Humane Society animal license fees. In speaking for the court, Cullen, J. said:

> "...I certainly should deny the right of the legislature to vest in private associations or corporations authority and power affecting the life, liberty and property of the citizens, except that of eminent domain, to be exercised for a public purpose and the management and control of reformatory institutions to which persons may be committed by the judicial or other public authorities...My chief objection is that the corporations are private in the sense that they proceed from the voluntary action of individual citizens alone (in many cases it is not necessary that the members of the corporation should be citizens), that the agents or officers of the corporation are appointed such by the corporators and that if such agents are invested by virtue of their agency alone with the power of public officers, it is in substance devolving the choice of public offices on a few of the citizens and possibly persons not citizens, while under the constitution, all public officers must be elected or appointed by other public authorities and thus trace their title to power and authority either immediately or mediately back to the People." (Emphasis Supplied).

Even if the World's Fair Corporation is considered a subordinate governmental agency, the delegation of the power

to enforce the laws of the state is nonetheless invalid:

> "....the administration of government generally can (not) be confined to 'subordinate governmental agencies' in the shape of corporations and associations" FOX v. MOHAWK & HUDSON RIVER HUMANE SOCIETY, supra.

In FINK v. COLE, 302 N.Y. 316, the Court of Appeals voided a statute which attempted to delegate the regulation of the sport of Horse Racing to the Jockey Club. The court said:

> "The stewards of the club exercising sovereign power are neither chosen by, nor responsible to the State government. They are not sworn officers, nor are they responsible as such. 'The legislative power of this State shall be vested in the Senate and Assembly' ".

Clearly, the powers of a peace officer are such that they should be exercised only by publicly appointed officers for whom some responsible official may be held to account. Indeed under § 88 of the Railroad Law, appointment of Railroad Police is by a duly appointed police official. This is not true of the Pinkertons who "police" the World's Fair grounds.

In addition Article XIII § 1 of the Constitution of the State of New York requires public officers to take oaths, before entering office; Art. V § 6 provides that

Civil Servants must be appointed pursuant to competitive examinations. This includes police personnel. ROTHEIM v. PATTERSON , 172 Misc. 353, 15 N.Y.S. 2d 247 (1939); ANDERSON v. RICE, 277 N.Y. 271 (1938).

Thus, even if the Legislature could delegate the power to appoint peace officers to a private corporation, without violating "Due Process""equal protection,"or Art. 3 § 1, they were bound to do so in such a manner that neither Art. XIII § 1 nor Art. V § 6 would be violated. See also Public Officers Law:

§ 2 (term), §3 (qualifications), § 6 (mode of choosing), § 10 (oath taking and filing), §11 (official undertakings) § 15 (failure or neglect to file); § 38 (Termination), § 35 (removal), §§ 39-43 (filling of vacancies), §66-a (accident reports). The above provisions exist to insure that persons who hold positions as peace officers, etc., are both qualified and responsible.

If, therefore, the Pinkerton Guards are not Peace Officers, they had no more power to arrest than other private citizens, and hence they could only act pursuant to § 183 of the Code of Criminal Procedure. That section, which sets down the circumstances under which a private person may

make an arrest, does not authorize "citizens' arrests" for mere violations such as those under § 722. of the Penal Law. Furthermore, there can be no charge of obstruction of a "public officer" under § 183 of the Code if for any of the above reasons, the Pinkerton Guards are not duly appointed public officers.

In any event, the statute making peace officers out of police employed by the World's Fair Corporation (Laws of 1963, Chapter 892 § 1) was not complied with if the guards were employees of the Pinkerton Detective Agency rather than the Fair Corporation itself, and so, even if no violation of law is involved, the Pinkerton Guards are not peace officers.

As to the Charges of Violation of § 1851:

POINT VI

SECTION 1851 DOES NOT APPLY TO NON-VIOLENT, NON-COOPERATION WITH A PERSON'S OWN ARREST.

Between 1879 when § 1851 was passed and 1962 there were no reported cases under § 1851 arising from a situation in which a person was charged with resisting his own arrest by a peace officer. There are several reasons for this. First of all, persons charged with resisting arrest have always been prosecuted under § 1825 of the Penal Law, which specifies that the person resisting must have used "force or violence".

Second, there was considerable doubt that the term "public officer" used in § 1851 included police officers. PEOPLE v. STEWART, 47 N.Y.S. 348, 183 Misc. 212(1944).

In general, the statute was only applied in different types of situations. See PEOPLE v. RICHTER, 265 App Div 767, aff'd. 291 N.Y. 161; PEOPLE v. FIDLER, 280 App Div 698; and PEOPLE v. PAPP, 185 N.Y.S. 2d 907 (1959). Section 1825 was used in cases of forcible resistance to arrest. The very existence as well as the terms of that statute indicate the nature of the conduct which the legislature intended to proscribe. No authority exists which declares that "doing nothing" in an arrest situation is a crime under § 1851.

POINT VII

EVEN IF § 1851 IS APPLICABLE, NON-VIOLENT, NON-COOPERTTION IS NOT "RESISTANCE"

As stated above there is no basis for a finding that non-violent, non-cooperation constitutes "resistance" or "obstruction" under the terms of § 1851, Both terms require some sort of affirmative conduct in the nature of force. PEOPLE v. KNIGHT, 35 Misc. 2d 216 (1962); MOSES v. STATE , 6 Ga App. 251 (1109); HARRISON v. STATE 26 Ga App. 645 (1921); UNITED STATES v. LOSE, 63 F.951; STATE v. WELCH 37 Wisc. 196 (1875); D.C. v. LITTLE, 70S.Ct.468; REGINA v. DAGLY, 29 CR 55 (NS) (1958); REGINA v. SENENWICK; 14 WWK(NS) 523 (1955). Several unreported New York cases substantiate this view. In PEOPLE v. KELLY et. al, Mag. Ct., Brooklyn, March 30, 1962 charges under § 1851 were dismissed where defendants had merely "gone limp". Three similar cases arising from demonstrations at the Downstate Medical Center in Brooklyn were dismissed in 1963 for the same reason. Indeed, one is under no duty to assist in his own arrest particularly where there are doubts as to the validity of the charges. In WRIGHT v. GEORGIA, 83 S.Ct. 1240 at 1245

(1963), the Supreme Court said:

> "(O)ne cannot be prosecuted for failing to obey the command of an officer if that command itself is violative of the constitution."

Furthermore, a person must be given a fair notice and a reasonable time to comply before he may be charged with resisting arrest. In City of Columbia v. Bouie, 124 S.E. 2d 332 (S. Car.1964) The South Carolina Supreme Court in reversing a conviction for resisting arrest, said:

> "It is apparent from the testimony of the arresting officer that the only resistance on Bouie's part was his failure to obey immediately the officer's order, with the result that the latter had to pick him up out of his seat...but we do not think that such a momentary delay in responding to the officer's command as is shown by the testimony here amounted to 'resistance' within the intent of the law."

In general, it must be said that a reading of § 1851 reveals a degree of vagueness which raises serious "Due Process" problems. The application of this statute to cases of non-violent, non-cooperation accentuates the invalidity of the statute, by revealing that the statute contains no ascertainable standard of guilt. SCREWS v. UNITED STATES, 325 U. S. 91 (1945).

POINT VIII

IF THE OTHER CHARGES FAIL, THE § 1851 CHARGE MUST, AS A MATTER OF LAW, BE DISMISSED.

A charge of violation of § 1851 can not stand if there was no valid reason for making the arrest. One may resist an unlawful arrest. PEOPLE v. GALUK, 11 Misc. 2d 961 (1958). In PEOPLE v. GALAMISON, 42 Misc. 2d 391 (1963), the court said:

> "(I)f a defendant is charged both with disorderly conduct and resisting arrest, the latter charge must fall if he is acquitted on the former, because in such an event, defendant's original underlying arrest for disorderly conduct is deemed to have been unlawful, entitling him to use reasonable force to resist it." (At P. 393)

As to Charges of Violation of § 2036:

POINT IX

SECTION 2036 OF THE PENAL LAW APPLYING TO UNLAWFUL INTRUSION DOES NOT APPLY TO PERSONS WHO ENTERED LAWFULLY.

The history of Section 2036 is outlined in PEOPLE v. STEVENS, 109 N.Y. 159(1888). The present Section traces its history through Section 467 of the Penal Code of 1881 to its origin in Laws of 1857, C. 396 Sec. 1:

> "An act to punish nuisances and malicious trespasses on land.
>
> Any person who shall hereafter intrude or squat upon any lot or piece of land situated within the bounds of any incorporated city or village without license or authority from the owner thereof, who shall place therein any hut, hovel, shanty or other structure without such license or authority, or who shall place, erect or occupy within the bounds of any street or avenue of such city ..., any hut ...or other structure, shall be deemed guilty of a misdemeanor."

That provision, with the exception that the words "squat" and "trespass" which have been omitted, is in its terms almost the same as the present Section 2036. But Chapter 396 contained additional sections not carried over in the Penal Codes of either 1881 or 1938. Section 2 of Chapter 396 provided:

> "The owner of any lot or piece of land within the bounds of any incorporated city or village, may give notice to any intruder or squatter who

> may have heretofore intruded or squatted thereon, to quit the same on a day to be specified, which shall not be less than ten days thereafter, which notice may be left upon the premises addressed to the occupant...thereof, without specifying their names; and in case such intruder or squatter shall not quit the said premises at or before the expiration of the time specified in such notice, he...shall be deemed guilty of a mi demeanor."

When the two sections are read together, it is clear that Section 1 made criminal a wrongful entry to the property and that Section 2 sought the punishment of those remaining on the property of the owner against his wishes, regardless of the circumstances of the original entry.

Although Section 2 no longer appears on the Penal Code of 1881 or thereafter, the concept which it embodied was not lost to the law. In place of Chapter 396, Section 2, a civil remedy against those remaining on land over the objections of the owner was provided by Section 2232(4) of the Code of Civil Procedure of 1877. This new section provided a summary proceeding for the recovery of possession of real property.

That it was in fact the intention of the legislature to replace Section 2 of Chapter 396 with a civil remedy provided by Section 2232(4) was made clear in the New York Code of Civil Procedure, 1881, at page 354, where Commissioner Throop, one of the drafters of the Code, states:

> "Subdivision 4 is new. It was suggested by Laws of 1857 C. 396, Secs 1 and 2 (4 Edm 617), which made the acts herein provided for a misdemeanor. The owner will be much more effectually protected and restored to his rights by conferring upon him this civil remedy."

The descendants of Section 2232(4) are Section 1411(4) of the C.P.A.and Section 713 (3) of the C.P.L.R.

Only 2 cases even infer that a legitimate entry followed by a refusal to leave after permission has been withdrawn might fall within the terms of Section 2036. These cases (PEOPLE v. DESTEFANIS, 34 N.Y.S. 2nd 52 (1942), and PEOPLE v. SWALD, 73 N.Y.S. 2nd 399 (1947)) were both prosecutions under Section 722 of the Penal Law, in which Judge Walsh of the Utica City Court held only that the defendants is both cases were not guilty under Section 722. Although Judge Walsh offhandedly stated that the defendants "might well" have been prosecuted under Section 2036, it is clear that he had no occasion to consider the meaning of the statute.

The simple fact of entry or remaining on land against the will of the owner could certainly not constitute a criminal trespass at common law. Elements of "breach of the peace" have in fact been held to be material elements of the offense, STATE v. WHEELER, 3 Vt.344. In BARR v. CITY OF COLUMBIA, 84 S.Ct. 1734 (1964) the Supreme Court said:

> "It is one thing to say that a person remaining on another's land after being told to leave may be ejected with reasonable force or sued in a civil action, and quite another to say that he may be convicted and punished as a criminal. The clear distinction between civil and criminal trespass is well recognized in the common law...Unless a trespass is committed under such circumstances as to constitute an actual breach of the peace, it is not indictable at common law but is redressed by a civil action only...Pre-existing law gave petitioner no warning whatever that this criminal statute would be construed despite its clear language and consistent judicial interpretation to the contrary as incorporating a doctrine found only in civil trespass cases." Accord: BOUIE v. CITY OF COLUMBIA, 84 S.Ct.1697 (1964).

Also significant is the fact that several states have statutes which explicitly state that either "intruding" or "remaining" on property against the will of the owner shall be a crime. e.g. Louisiana: LOMBARD v. LOUISIANA 373 U.S. 267 (1963); Florida: ROBINSON v. FLORIDA, 378, U. S. 153 (1964.) By removing Section 2 of Chapter 396

of laws of 1857, the Legislature of the State of New York affirmatively indicated that Section 2036 was not intended to cover "intruding" or "remaining" alternately.

The staff comments concerning the new "real estate crimes" (Art. 1, Proposed New York Penal Law) fully recognize the gap in the present statutes:

> "When a person enters a building unlawfully but with no intent to commit a crime therein, or there is no evidence of such intent, the offense of burglary is not established. In cases where it is not probable that an intruder entered with the requisite intent, appropriate criminal sanctions should be available. The trespass provisions in the existing Penal Law Sections 1425(9), 2036) however, are at best ill-defined and narrow in scope PEOPLE v. STEVENS, 109 N.Y. 159, 16 N.E. 53 (1888). The proposed penal law corrects these deficiencies by presenting in three degrees a new definition of the offense of 'criminal trespass'..."

As has already been stated earlier, the World's Fair bears many of the indicia of public property.

The many public attributes of Fair property render it highly unlikely that § 2036 should be applicable at all. Certainly any member of the public may enter the Fair grounds. One who purchases a ticket before entering has not "intruded".

POINT X

PERSONS WHO ENTER AND REMAIN ON THE GROUNDS OF THE WORLD'S FAIR UNDER A COLORABLE CLAIM OF RIGHT LACK THE CRIMINAL INTENT NECESSARY UNDER SECTION 2036.

Since Section 2036 is a penal statute, a criminal intent must be shown for prosecution. PEOPLE v. STEVENS, supra; HEWITT v. NEWBURGER, 141 N.Y. 538, (1894) PEOPLE v. BARTON, 232 N.Y.S. 2d 75.

In PEOPLE v. BARTON, supra the defendant broke down a door to enter an apartment in which the complainant was the tenant. The apartment was used by a corporation in which both complainant and defendant were officers. Before the indicent, complainant informed defendant that he could no longer enter. On appeal, the court held that the defendant had a "colorable basis" for entering, this:

> "colorable claim of right - even if it were mistaken - negatives the criminal intent necessary."

Persons who purchase tickets and enter the World's Fair ground with the intention of exercising their constitutional right of free speech, lack the criminal intent necessary under §§ 2036.

Furthermore, peaceful conduct for the purpose of expressing a grievance was as stated previously " pro-

tected speech, " and no cause for either ejection or arrest.

EDWARDS v. SOUTH CAROLINA, supra; FIELDS v. SOUTH CAROLINA, supra; COX v. SOUTH CAROLINA, supra.,

Respectfully submitted,

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RENDERED: JUNE 16, 1967

COURT OF APPEALS OF KENTUCKY

BOARD OF EDUCATION OF
LEXINGTON, KENTUCKY, APPELLANT,

V. APPEAL FROM THE FAYETTE CIRCUIT COURT
HONORABLE SCOTT REED, JUDGE

GLADNEY HARVILLE ET AL., APPELLEES.

OPINION OF THE COURT BY COMMISSIONER WADDILL

REVERSING

This is an appeal from an order dismissing an action for declaratory judgment in a proposed school merger for the reason that no justiciable issue is presented.

The Board of Education of Lexington (hereinafter referred to as city board) and the Board of Education of Fayette County (hereinafter referred to as county board) entered into an agreement March 20, 1967, providing for merger of the city and county school districts. This agreement, by its terms, will be effective when the tax rates of the city and county school districts are equalized. As expressed in their written agreement the two boards are uncertain as to whether they have chosen a valid method to equalize their tax rates. Hence, this action seeking a declaratory judgment was instituted by the city board and city taxpayers against the county board and county taxpayers.

Prior to the 1965 amendment to KRS 132.010 (and related statutes) both boards were levying the maximum ad valorem tax under KRS 160.475(1). The city school district had no special tax levies in effect but the county school district had voted two levies totaling 82 cents under KRS 157.440 and 160.477. See Fayette County Board of Education v. White, Ky., 410 S.W. 2d 612.

It was held in Russman v. Luckett, Ky., 391 S.W. 2d 694, that all property in this state must be assessed at its fair cash value. Accordingly Lexington and Fayette County property assessments were adjusted upward and the tax rates were rolled back pursuant to KRS 160.470. The two boards have agreed that, due to this change in the tax rates and a substantial difference in the assessment rates of the city and county prior to full assessment, the tax rate in the county school district is presently 5.6 cents higher than that in the city school district.

By the terms of the merger agreement the taxpayers in the city school district will, upon merger, become subject to the tax rate of the county board. However, it is contended that, since the 5.6 cents represents voted tax levies, a referendum in the city school district approving this increase is required to validate this portion of the merger agreement.

The first question for our determination is whether a justiciable controversy is presented. The trial judge observed that, while merger by agreement of the involved school districts is authorized by KRS 160.040, in case of disagreement an independent school district desiring to become a part of a county school district may have the State Board of Education determine the conditions of merger. KRS 160.041. The trial judge dismissed the action as not a proper subject for a declaratory judgment since a statutory means of settlement is available and because he believed the equalization of tax rates as sought by the parties is a legislative function.

Civil Rule 57 states in part that the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. In applying this civil rule we have held that the availability of a statutory remedy does not ipso facto make declaratory relief inappropriate. Iroquois Post No. 229 v. City of Louisville, Ky., 279 S.W. 2d 13.

The remedy provided by KRS 160.041, which is predicated on a refusal or failure to agree upon a proposition of merger, is unavailable in the instant action because as we read the agreement the parties have assented to the merger. They merely ask us to decide whether a referendum in the city school district is a necessary condition precedent to the imposition of a uniform tax rate throughout the merged school district. This is obviously a question requiring a judicial determination. It is the policy of this court to declare the rights of litigants when it concludes that the advance determination of a justiciable controversy will eliminate or minimize the risk of mistakes. Combs v. Matthews, Ky., 364 S.W. 2d 647. These considerations exist here since confusion detrimental to the school system will undoubtedly result if the validity of a county board's tax levy is subsequently challenged. It is apparent to us that this controversy justifies declaratory relief. 22 Am. Jur. 2d, Declaratory Judgments, Section 11. In view of the exigencies heretofore observed we will decide this case upon its merits rather than remanding it for a formal judgment of the trial court. Hedden v. Hedden, Ky., 312 S.W. 2d 891.

Is there a controversy? Must there be one?

The special voted taxes mentioned herein are not general obligations. Therefore, that portion of KRS 160.040, requiring that such taxes "continue to be levied and collected over the same area" after merger, is inapplicable. Cf. Ranier v. Board of Education of Prestonsburg Independent School District, Ky., 273 S.W. 2d 577. This court has previously decided that KRS 160.041 is supplementary to KRS 160.040 and therefore we must look to both of these statutes to ascertain the powers of the two districts in fixing the terms of a merger agreement. La-Follette v. Ovesen, 341 Ky. 535, 236 S.W. 2d 457.

As we interpret these statutes and apply the case law applicable thereto, we conclude that, upon merger, the city school

district "loses its identity and it is swallowed up and absorbed by the county district." Board of Education of Pulaski County v. Nelson, 263 Ky. 83, 103 S.W. 2d 691. Hence, all property owners in the county school district (including the residents of the former city school district) will be liable for payment of the county school tax and a referendum under KRS 157.440 and 160.477 is unnecessary. After merger the situation of the residents of the former city school district is analogous to that of property owners who automatically become liable for a voted indebtedness of a city upon annexation of their property. Lowe v. City of Bowling Green, Ky., 247 S.W. 2d 386.

Our conclusion contemplates compliance by the county board with the provisions of KRS 160.470. All questions not specifically answered herein are reserved.

The judgment is reversed with directions to enter a new one approving the merger in accordance with this opinion.

All concur.

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COURT OF APPEALS
OF THE STATE OF NEW YORK

.....

IN THE MATTER OF THE APPLICATION OF

AMELIA CASSESE,

Petitioner-Respondent,

- against -

HERMAN KATZ,
Clerk of the City of New York,

Respondent-Appellant.

.....

.....

IN THE MATTER OF THE APPLICATION OF

MARIA MONPLAISIR, MICHAEL J. YORK
and LARS EKWURZEL,

Petitioners-Respondents,

- against -

HERMAN KATZ,
Clerk of the City of New York,

Respondent-Appellant.

.....

BRIEF OF AMERICAN JEWISH COMMITTEE, AMERICAN JEWISH CONGRESS, ANTI-DEFAMATION LEAGUE OF BNAI BRITH, CATHOLIC INTERRACIAL COUNCIL, CORE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, NEW YORK CIVIL LIBERTIES UNION, OFFICE OF CHURCH AND RACE OF THE PROTESTANT COUNCIL OF NEW YORK, SCHOLARSHIP, EDUCATION, AND DEFENSE FUND FOR RACIAL EQUALITY, AND URBAN LEAGUE OF GREATER NEW YORK AS AMICI CURIAE.

Carl Rachlin,
Stephen M. Nagler,

of Counsel.

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STATEMENT OF AMICI

In view of the importance of this case, the American Jewish Committee, American Jewish Congress, Anti-Defamation League of B'nai Brith, Catholic Interracial Council, CORE, National Association for the Advancement of Colored People, New York Civil Liberties Union, Office of Church and Race of the Protestant Council of New York City, Scholarship, Education and Defense Fund for Racial Equality on behalf of the Congress of Racial Equality, and the Urban League of Greater New York, all concerned with the civil rights of citizens and with the maintenance of civilian control of the Police Department of the City of New York submit the following brief urging the reversal of the order of the Appellate Division, First Department, affirming the order of Hon. Irving Saypol, Justice of the Supreme Court of the State of New York, First Department, which directed the respondent-appellant to certify that the petitions submitted to him comply with all the requirements of law.

The facts are accurately and objectively summarized in the extensive Statement of Facts presented in the Respondent's Memorandum in Opposition.

POINT I.

Neither Petition Proposes an Amendment to The Charter of the City of New York and is Therefore Unauthorized by Section 37 of the Municipal Home Rule Law of New York State

Section 37 of the Municipal Home Rule Law provides for the adoption by initiative of amendments to the City Charter. As emphasized by the New York Courts, the proposed local law must in fact be a charter amendment, as distinguished from other local laws, ordinances, administrative regulations and resolutions which differ in form as well as content from charter provisions.

> "The City Home Rule Law delegates no power to the people to initiate or adopt by popular vote amendments to city ordinances, resolutions or local laws other than those amending a city charter." Noonan v. O'Leary, 132 N.Y.S. 2d 726 (1954) at 728.

> "Section 19-a (predecessor to Section 37 of the Municipal Home Rule Law) restricts the use of initiative and referendum to charter amendments as distinguished from local laws which are enacted in ordinary course by the legislative body in regulation of the City's affairs without legislative amendment of the charter. Even more clearly, administrative action, which may be taken without legislative authority or approval was not intended to be taken by direct action of the voters. The test of validity in every case is whether the local law is in truth and in fact an amendment of a city charter." Matter of Astwood v. Cohen, 291 N.Y. at 490, 53 N.E. 2d at 360 (1944).

A. The Proposals are Inappropriate as Amendments to a Short Form Charter

Authorized by the State Legislature (L. 1936, ch. 438; L. 1937, ch. 929), the New York City Charter is a "short form" charter. This form of charter was proposed by the 1936 Charter Revision Commission, which envisioned it as "the fundamental plan of the city government ..." and the "general principles which are

to govern its operation ...." (Report of the New York City Charter Revision Commission, 1936, at 7). Supplemented by the Administrative Code which is designed for the regulation of numerous details and the guidance of the departments, Id. at 7, the report of the 1936 Constitutional Convention Committee makes it clear that the charter was intended only to

> ....outline in skeleton form the agencies of the city government and their basic functions. It does not purport to embody all of the provisions of law relating to the government of the city. It provides the structural framework of the city government and is intended to set forth the organic law relating to the city. It was intended that the details of administration be included in an administrative code. Such a code was to enact all provisions of law affecting the city which were consistent with the provisions of law of the new charter.
>
> An analogy might be drawn in describing the relationship between the Administrative Code and the Charter as on a par with the relationship between the statutory law and constitution of a sovereign body, wherein those provisions which were intended to be flexible and yield to changing conditions would be subject to easy amendment, while primary grants of power would be contained in a body of law which would express fundamental principles and ideals of government." New York State Constitutional Revision Committee Report, 1936, Volume 5, p. 5-6.

Commenting on administrative agencies, the New York City Charter Revision Commission of 1936 further noted:

> "In its short charter the commission has indicated only the essentials of the organization of each department and, in as general language as possible, its essential powers, leaving to the code the large amount of administrative detail which is contained in the existing charter and other law." (Supra at 33)

In accordance with this purpose, Section 434(a) of the Charter, under which the Police Commissioner derives his general authority to act, (including the authority to establish a civilian

complaint review board) states:

> "The Commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department and of the police force of the department."

The Administrative Code, Section 434, has numerous subdivisions spelling out in detail the various specific powers of the Police Commissioner encompassed within the general power set forth in Section 434 of the City Charter.

In sharp contrast to the New York City Charter, most New York municipal charters, however, are "long form", defining and delineating in detail the scope of permissible official action and administrative conduct. Such long form charters may be appropriate for smaller communities but not for a metropolis like New York where the complications of living explain the legislative authorization for a separation of the Charter from the Code.

An attempt by the Patrolmen's Benevolent Association (hereinafter referred to as the P.B.A.) to offer a proposal similar to those presently at issue as an amendment to the New York City Charter was rejected by this Court in Matter of Astwood v. Cohen, supra. On that occasion, the P.B.A. proposed a local law by initiative providing for a salary bonus to policemen and firemen. Dressed in the guise of an amendment to the City Charter, the proposed bonus purported to be in accordance with the predecessor of Section 37 of the Municipal Home Rule Law, Section 19-a of the City Home Rule Law.

An action in the nature of mandamus under Article 78 of the Civil Practice Act to compel the Board of Elections to disregard the P.B.A.'s petition and omit the proposed law from the ballot was

brought. Despite the claim by the P.B.A. that the law proposed by the petition was an amendment to the charter, the Court of Appeals stated:

> Even though sections of the Municipal Home Rule Law should be construed liberally according to Section 31 - (Note, now Section 351) liberal construction may now, however, ignore the legislative mandate that only amendments to the charter, as distinguished from other laws, may be enacted by the process of initiative and referendum." Id at 488.

Noting further that the specificity of the proposed law made it an inappropriate amendment to the short form charter of New York City, this Court added:

> "The facts which control will be found in the nature of the proposed law and its relation to the provisions of a particular city charter." Id. at 488.

This procedure has been followed in later cases.

In Matter of Warden, 275 App. Div. 1000, aff'd 300 N.Y. 39 (1949), a petition to alter the Newburgh city charter by initiative to provide for minimum annual salaries for policemen was offered. Objections to the form, sufficiency and validity of that petition, filed in the Supreme Court, were dismissed on the merits. Holding the law proposed by the petitions to be an appropriate charter amendment, the Court of Appeals noted that the long form charter of Newburgh (unlike New York City) had an administrative code built into it and minimum salaries were obviously an appropriate part of an administrative code.

But the short form charter of New York City and the Astwood decision, supra, were specifically distinguished:

> "...In that city (New York) however, the salaries of the policement and firemen were then and are now fixed by

> an administrative code and not by any charter provision. In the Astwood case ... this court in 1943 held the chief question to be whether the proposed law is in truth an amendment of the charter or is so far unrelated to the Charter as to be an amendment in name only ... In applying the statutory test to the proposed law, we must relate the law to the short form charter of the City of New York and determine whether the law is in truth an amendment of the Charter or is merely labeled as such." Under that test, this court in Astwood rejected the local law in question.
>
> "But the Charter of the City of Newburgh is no mere skeleton or framework of governmental structure like the charter of the city of New York. The Newburgh Charter contains many provisions in respect of such matters as assessments and local taxes ... and the organization and regulation of the fire and police departments. Furthermore the City of Newburgh has no administrative code such as was enacted to harmonize with the short form charter of the City of New York. In a word, the Astwood case affords no solution to the issue presented." Id. at 42.

In municipalities functioning under long form charters, a proposed local law on procedures for handling civilian complaints against the police might indeed be an appropriate amendment to the city charter because the charter and the Code are one document. But as an amendment to the Charter of New York City which is a concise statement embodying broadly phrased grants of power and general principles, it is inappropriate. Nothing in Warden, supra, is to the contrary. Specifically this Court made clear that the ruling in Astwood, supra was not overruled, as the majority below recognized. Thus the distinction remains between petitions proposing Charter amendments and those which merely seek to amend the Administrative Code.

IB

The Proposed Local Law would be Appropriate Only as an Amendment to the Administrative Code

Although drawn in the guise of charter amendments the proposed local laws would, in fact, only be appropriate as amendments to the Administrative Code. This is precisely the characterization given a proposed local law too detailed to be an appropriate charter amendment by the Court of Appeals in Astwood (Id. at 489).

> "The proposed local law in fact amends nothing in the charter and the provisions of law which are amended are found in the Administrative Code."

Unlike the Charter, where no mention of procedure for discipline within the Police Department is set forth, the Administrative Code devotes an entire detailed section to this subject, viz., Section 434a-14.0, New York City Administrative Code. In fact, subsection (b) of the existing Section a.H.0434a-14.0 of the Code includes language virtually identical to that of subsection (e) of the proposed local law in the Cassese petition. Both are set forth below.

Proposed Section 440(e)

Prosecution: Right to Hearing:

(Cassese Petition) Notwithstanding anything contained to the contrary, this section shall not be construed to prevent investigation, or prosecution of members of the Police Department for violations of law by a duly constituted court having jurisdiction, a grand jury, district attorney, or other law enforcement agency; nor shall this section be construed to permit a member of the Police Department to be fined, reprimanded, removed, suspended or dismissed, except upon written charges, after such charges have been examined, heard, investigated by the Commis-

sioner, one of his deputies, or the assistant to the Commissioner.

Existing Administrative Code Provision

Subsection (b) of Section 434a-14.0 of the New York Administrative Code:

> (b) Members of the force, except as elsewhere provided herein, shall be fined, reprimanded, removed, suspended or dismissed from the force only on written charges made or preferred against them after such charges have been examined, heard and investigated by the Commissioner, one of his deputies or the assistant to the Commissioner, upon such reasonable notice to the member or members charged, and in such manner or procedure, practice, examination and investigation as such Commissioner may, by rules and regulations, from time to time prescribe.
>
> (Subd. (b) as amended by L.L. 1955, No. 30, May 6.)

Provisions such as that proposed by petitioners are precisely the "questions of administrative detail" envisioned by the New York City Charter Revision Committee of 1936 properly included within the scope of the Administrative Code. See Report of the New York City Charter Revision Commission of 1936, page 41. No statutory authority for amending the Administrative Code by initiative action exists.

> "...the Administrative Code...was enacted by the legislature and...may only be amended as provided by Section 39 of the City Charter or by the Legislature itself." Astwood, supra at 490.

That the proposals of petitioners "are related" to the charter may be true, as the majority below state, but we urge this misconceives the statute. Everything in the Code is "related" to the Charter; but the true test is whether the proposal is of such a nature as to be included in the Charter, or in the Code. These petitions refer to matters properly in the Code. To include them in the Charter

is to nullify the work of the Legislature in creating two separate documents, for then matters relating to the Code will be in the Charter. Thus administrative matters will be in both documents which is hardly what the Legislature intended.

POINT II

Under the Present Home Rule Law the Astwood Doctrine is Still Controlling

The decision in Astwood that administrative matters are inappropriate as amendments to a short form charter has lost none of its force. Changed twice since the Astwood case (See Appendix) the Home Rule Law, in so far as the present proceeding is concerned, is intact. The law in effect at the time of the Astwood decision read in part:

> City Home Rule Law, Section 19-a-Provisions for Adoption of Amendment
>
> "A local law amending a city charter may also be adopted in the following manner ..." (L. 1939 Ch. 867).

No definition of a charter amendment was included in the statute at that time.

In 1940, petitions proposing the wholesale amendment of the City Charter of Johnstown, New York, under Section 19-a of the City Home Rule Law were dismissed by the Appellate Division (Third Department) on the grounds that the petitions did not present an amendment contemplated within Section 19-a, but instead proposed an entirely new charter. Maylender v. Morrison, 200 App. Div. 892, 22 N.Y.S. 2d 555, aff'd 284 N.Y. 575, 29 N.E. 2d 395 (1940).

Specifically overruling this decision, the legislature amended Section 19-a to read:

> "A local law amending a city charter, however extensively may also be adopted in the following manner..." (L. 1944 Ch. 602).

At the same time a definition of "charter amendment" was added. Article

I, Section 2 of the City Home Rule Law was augmented by subsection 5 stating:

> The term "charter amendment" means any change in an existing charter presented as such under authority of this chapter or any chapter or state statute. A charter amendment may be of any extent and deal with any number of subjects. A proposal presented as a charter amendment shall not be rejected as such on the ground that it constitutes a new charter. (L. 1944 Ch. 602).

That these changes were not intended to overrule Astwood is clear from the fact that they were proposed before a decision in Astwood was handed down.

But the problem did not end with these amendments. In Application of Grenfell, 185 Misc. 558, 57 N.Y.S. 2d 284 (1945), the Court again struck down an initiative proposing an entirely new charter for the City of Schenectady.

Reacting to this decision in a 1957 legislative note we read:

> The addition of a new charter to the scope of this section is not an extension of the intended coverage of the section but a clarification to avoid unintended limitations by Court decision ... In 1940 a proposed extensive revision of a city charter presented in amendment form was thrown out by the courts as in fact not an amendment but a new charter. (Maylender v. Morrison, 1940, 200 App. Div. 892, 22 N.Y.S. 2d 555, aff'd 248 N.Y. 575, 29 N.E. 2d 395). In 1944, the legislature sought to overcome this decision by inserting the words 'however extensively' after 'amending a city charter' and some extensive charter revisions have been adopted under the provisions of the section since that time. However in 1945, a court held that this amendment left unchanged the distinction between the adoption of a new charter and adoption of amendments, though amendments may be extensive as well as numerous. (Application of Grenfell, 1945, 185 Misc. 558, 57 N.Y.S. 2d 284) ..." (1957 Sessions Law of New York, at 2186).

Nowhere is there expressed an intent to reverse by legisla-

tion the ruling in Astwood. To emphasize further its intent, the legislature again amended the Home Rule Law in 1963. Section 19-a was changed to read:

> "A local law amending a city charter (however extensively) or providing a new city charter, also may be adopted in accordance with the provisions of this section..." (L. 1963, Ch. 843).

The definition of "charter amendment" in Article I, Section 2 was amended to read:

> "The term 'charter amendment' means a new charter or any change in an existing charter presented as such under authority of this chapter ..." (L. 1963, Ch. 843).

The City Home Rule Law was repealed and superceded by the Municipal Home Rule Law in 1964. Section 19-a became Section 37, which is presently in effect.

Behind the legislative changes in the Home Rule Law since the Astwood case, was an intent to permit the adoption of entirely new charters or substantial parts of charters such as would be necessary to establish new departments or merge old ones to meet current problems. But there is no evidence of a desire to abolish the distinction between an amendment to the Charter and an amendment to the Code.

In short, the phrase "however extensively" and the other language in the present statute was meant to allow any number of changes in a charter at one referendum. It was not intended to allow the incorporation of detailed provisions not appropriate to short form charters. To allow the addition of such detail would be to undermine the work started by the 1936 Charter Revision Commission and carried

on by the 1961 Charter Revision Commission. It would destroy their conception of the short form charter, allowing some administrative details to be placed in the charter, while others are found in the Administrative Code, thus creating a situation unjustified by either the legislative history or the decisions of this Court.

The Astwood doctrine remains unaffected by the legislative action of the past twenty years. A proposal for salary bonuses, as in Astwood, the placement of traffic lights or other detailed matter are still inappropriate to a short form charter. Astwood is as valid today as it was in 1944. The local laws presently at issue would have been inappropriate amendments in 1944, just as they are today.

POINT III

The Power to Initiate Legislation Should Not Extend to Purely Administrative Practices

Under the general provisions of Section 434a of the City Charter of New York, supra, and the more specific provisions of Section 434a-14.0 of the Administrative Code, supra, the Police Commissioner is empowered to appoint a civilian complaint review board. Pursuant to these provisions, the Commissioner issued General Order No. 14 on May 2, 1966, amended on May 17, 1966, which established a complaint review board both of civilians and members of the police force. The question of the validity of the Commissioner's power to issue this order has already been determined by the New York State Supreme Court. In Cassese v. Lindsay, (New York Law Journal, June 24, 1966, p. 12) the Court refused to enjoin the Police Commissioner from establishing the review board, upholding the power of the Police Commissioner to issue General Order No. 14. Justice Murphy in his opinion noted specifically the "...right of the agency chief to control and administer his department ... It is not the province of any individual, or organization, or indeed, the Court, to dictate to an appointed public official how he may best command his department." (Cassese v. Lindsay, Ibid.)

In another recent New York decision involving referenda the Court warned that "a transparent attempt to formulate a ... referendum on some technical basis will not suffice, if in fact the attempt is really to avoid government responsibility and shift the burden of decision to a public poll." See Kupferman v. Katz, supra, at 774. In other words, the Courts have expressed a strong reluctance to per-

mit referenda to interfere with legally authorized administrative acts.

> It is quite generally held in this country that the power to initiate legislation under statutes providing for the initiative and referendum in the conduct of municipal affairs does not extend to such functions of city government as are purely administrative in character. (People v. Kapp, 355 Ill. 596; 189 N.E. 920 (1934).

The tendency to protect administrative decisions from review by referendum and initiative action stems in part from a concern that such devices may interfere with and delay the orderly performance of government functions by proper authorities.

> To allow laws dealing with referendum in the conduct of municipal affairs to be invoked to annul or delay executive or administrative action tends to delay and in some cases to annul the prompt and efficient administration of city affairs. Read v. Scottsbluff, 139 Neb. 418; 297 N.W. 669 (1941).

In other words, referendum and initiative were never intended as devices to inquire into and review acts reflecting the expertise and experience of administrative officials where such acts are necessary to the effective and continuing functioning of their departments. This was clearly the feeling of the New York City Charter Revision Commission when it considered the incorporation of a provision for initiative action into the City Charter itself:

> This initiative is broad enough to admit of the submission to the people of broad questions of principle in relation to the frame of government such as may appropriately be submitted to popular vote; but it was not thought wise to permit initiation of questions of administrative detail that can more deliberately and effectively be dealt with by a legislative body. Report of New York City Charter Revision Commission, supra, at 41.

In fact, the Court of Appeals, in Astwood v. Cohen, supra, adopted

precisely that test in ruling that administrative decisions by public officials and agencies cannot be routinely subjected to public referendum. The decisive factor was whether the administrative act in controversy could be performed without legislative approval:

> Administrative action which may be taken without legislative authority or approval was not intended to be taken by direct action of the voters ... The tradition of representative, democratic government is too strong to permit an inference that the legislature intended to extend the exceptional process of direct legislation to details of administration unrelated to amendments of the Charter, whether regulated by local laws and ordinances or managed by responsible administrative agencies. Matter of Astwood v. Cohen, supra, at 491.

The Police Commissioner's General Order No. 14 was not subject to legislative approval and was validly issued without it. Cassese v. Lindsay, supra.

It cannot be doubted that the present proposal of the petitioners to bring the matter of a civilian complaint review board before the electorate clearly constitutes an attempt to affect and limit the duly constituted power of the Police Commissioner to control the administration and discipline of the department, all of which are derived from the Code.

CONCLUSION

WHEREFORE, it is respectfully submitted that the affirmance by the Appellate Division, First Department of the order of the Supreme Court of New York County be reversed.

Dated: New York, New York
August 31, 1966

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

IN THE MATTER OF THE APPLICATION OF

AMELIA CASSESE,

Petitioner,

-against-

HERMAN KATZ,
Clerk of the City of New York,

Respondent.

BRIEF OF AMERICAN JEWISH COMMITTEE; AMERICAN JEWISH CONGRESS; CATHOLIC INTERRCIAL COUNCIL; CONGRESS OF RACIAL EQUALITY; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; NEW YORK CIVIL LIBERTIES UNION; SCHOLARSHIP, EDUCATION, & DEFENSE FUND FOR RACIAL EQUALITY; AND URBAN LEAGUE OF GREATER NEW YORK AS AMICI CURIAE.

SUMMARY OF ARGUMENT

POINT I. HISTORICALLY THE SCOPE OF INITIATIVE AND REFERENDUM HAS BEEN LIMITED TO REMEDYING LEGISLATIVE ABUSES.

POINT II. THE PROPOSED LOCAL LAW DOES NOT IN FACT CONSTITUTE A CHARTER AMENDMENT AND IS THEREFORE UNAUTHORIZED BY SECTION 37 OF THE MUNICIPAL HOME RULE LAW OF NEW YORK STATE.

POINT III. THE PROPOSED LOCAL LAW WOULD IN FACT ONLY BE APPROPRIATE AS AN AMENDMENT TO THE ADMINISTRATIVE CODE.

POINT IV. THE POWER TO INITIATE LEGISLATION SHOULD NOT EXTEND TO PURELY ADMINISTRATIVE FUNCTIONS.

POINT V. THE CITY CLERK WAS OBLIGATED TO CERTIFY THAT THE PETITIONS FAIL TO COMPLY WITH THE REQUIREMENTS OF LAW.

STATEMENT OF THE CASE

On July 7, 1966, petitions were filed in the office of the Clerk of the City of New York by the Patrolman's Benevolent Association (hereinafter referred to as the P.B.A.) pursuant to Section 37 of the Municipal Home Rule Law of the State of New York. The petitions proposed the adoption of a local law to require that all members of any review board established to investigate and process civilian complaints against policemen be full-time members of the Police Department of the City of New York, thereby removing from the Mayor of New York City any authority to investigate police practices and procedure, and prohibiting establishment of a review board comprised in whole or in part of civilian members.

Section 37 of the Municipal Home Rule Law requires that the City Clerk "... issue a certificate that the petition complies with or does not comply with the requirements of law." Pursuant to this requirement, on August 5, 1966, Herman Katz, Clerk of the City of New York certified that the petitions failed to meet all the requirements of law.

On July 29, 1966, Amalia Cassese petitioned for an order pursuant to Article 78 of the Civil Practice Law and Rules and Section 37 of the Municipal Home Rule Law declaring valid the petition filed by the Patrolman's Benevolent Association with the City Clerk and directing the City Clerk to transmit to the Council of the City of New York a certificate that he has examined same and has found that it complies with all the

requirements of law.

The American Jewish Committee, The American Jewish Congress, The Catholic Interracial Council, The National Association for the Advancement of Colored People, The New York Civil Liberties Union, The Scholarship, Education and Defense Fund for Racial Equality on behalf of The Congress of Racial Equality, and the Urban League of Greater New York appear in this case as amici curiae for the purpose of showing that the petitions do not comply with the provisions of Section 37 of the Municipal Home Rule Law and, therefore, that the City Clerk acted correctly and according to his duty by certifying that such petitions fail to meet the requirements of law.

POINT I.
HISTORICALLY THE SCOPE OF INITIATIVE AND REFERENDUM HAS BEEN DERIVED TO REMEDYING LEGISLATIVE ABUSES

We believe that in order to understand the nature of initiative and referendum in New York State and New York City, it is important to examine their historical development.*

Initiative and referendum have been and still are considered extraordinary measures. In the United States, they arose specifically as corrective measures to combat abuses of legislative power; that is, to act where the legislature had failed to do its duty.

Eighteenth century constitution-makers, distrusting executive power, made the legislature substantially omnipotent. The electorate was restricted to the single function of choosing representatives and electing officials. When the legislature began to abuse its power, becoming unresponsive to the wishes of the people, constitutional limits were placed upon legislative prerogative and a movement seeking initiative action arose. In 1821, New York became the first state beyond New England borders to submit its constitution to popular vote, in contrast to earlier constitutions, which had been ratified by convention. By 1840, other states were following suit. Gradually direct action by voters was expanded to include ordinary as well as constitutional legislation. It was recognized, however, that once the people secured the opportunity to adopt their own

* NOTE: Although initiative and referendum are technically distinct procedures, "referendum" meaning approval by the electorate of action previously taken by the legislature and "initiative" meaning direct initiation of legislation without prior action by the legislature, no distinction is made in this brief or the petitions in question.

laws all other difficulties would not vanish. Initiative action was notand could not be a panacea. Provisions for initiative and referendum were utilized by municipalities and states "... not from a popular conviction that they promise a wholly satisfactory method of law-making, but from a widespread impression that only through these agencies can present day legislative abuses be eradicated."[1.] (emphasis added).

In short, initiative and referendum were intended to be used restrictively, as a remedy for legislative abuses and not as an unfettered license to register despleasure with the acts of any government official. One authority noted:

> when we consider the vast number of bills passed by the state legislatures and of ordinances and resolutions passed by municipal councils, its immediately becomes evident that no one but a lunitic would propose the submission of all these measures to the people for formal approval, unless he considered most of this legislation unnecessary.[2.]

This notion of the restricted scope of initiative and referendum has prevailed to this day. Kupferman v. Katz, 243 NYS 2d 773 (1963); Swanker v. City of Amsterdam, 5 Misc.2d 932, 161 NY2d 932 (1937); Matter of McCabe v. Voorhis, 243 NY 401,(1926); Matter of Warden, 275 A.D. 1000, aff'd 300 NY 39 (1949).

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1. Munro, William B.(ed.), The Initiative,Referendum and Recall,D. Appleton and Co. (NY:1912) p.15
2. Wilcox,Dr. Delos F.,Government By All the People,Macmillan (NY:1912) p.132.

Representative democracy as embodied in the system of government established by the Constitution and laws of both the United States and the State of New York includes the idea that laws be enacted by a duly elected legislative assembly and that direct action by the electorate which may disrupt the orderly procedure of government be reserved for exceptional situations, Lynch v. O'Leary, 178 Misc. 567, 2NY 2d 588. Thus

> ... direct legislation in cities must always rest on some constitutional or statutory grant of power. Government by representation is is still the rule. Direct action by the people is the exception. (Matter of McCabe v. Voorhis, supra at 413)

THE PROPOSED LOCAL LAW DOES NOT IN FACT CONSTITUTE A CHARTER AMENDMENT AND IS THEREFORE UNAUTHORIZED BY SECTION 37 OF THE MUNICIPAL HOME RULE LAW OF NEW YORK STATE

The petitioners contend Section 37 of the Municipal Home Rule Law of New Y9rk State furnishes the express statutory authorization necessary for their action. The law they propose however, does not properly fall within the scope of thatsection.

Section 37 provides for the adoption by initiative for amendments to the City Charter. The essential requirement of this section, as emphasized by the New York Courts, is that the proposed local law be in fact a charter amendment, as distinguished from other local laws, ordinances and resolutions which differ in form as well as consent from charter provisions. See Hacker v. Common Council of Ithaca, 49 Misc. 69 (1966); Noonan v. O'Leary, 132 NYS 2d 726 (1954); Matter of Astwood v. Cohen, 291 NY 484 (1944); Maylander v. Morrison, 260 App.Div. 892, aff'd 284 NY 575 (1940).

The New York City Charter is unusual in that it is a "short form" charter. This form of charter was proposed by the 1936 Charter Revision Commission, which envisioned it as " the fundamental plan of the city government... and the general principles which are to govern its operation..." (Report of the New York City Charter Revision Commission, 1936, Id at 7.), to be supplemented by the Administrative Code " for the regulation of numerous details and the guidance of the departments,"(Id at 7.)

Commentaries at the time of its creation make it clear that the Charter was intended only to

> ...outline in skeleton form the agencies of the city government and their basic functions. It does not purport to embody all of the provisions of law relating to the government of the city. It provides the structural framework of the city government and is intended to set forth the organic law relating to thecity. Itwas intended that the details of administration be included in an administrative code. Such a code was to enact all provisions of law affecting the city whichwere consistent with the provisions of law of the newcharter.
>
> An analogy might be drawn in describing the relationship between the Administrative Code and the Charter as on a par with the relationship between the statutory law and constitution of a sovereign body, wherein those provisions which were intended to be flexible and yield to changing conditions would be subject to easy amendment, while primary grants of power would be contained in a body of law which would express fundamental principles and ideals of government. (New York State Contitutional Convention Committee Report, 1936, Volume 5, p.5-6).

Thus, Section 434(a) of the charter, under which the police commissioner derives authority to establish a civilian complaint review board, states very generally that

> The Commissioner shall have cognizance and control of the government, administration, disposition and discipline of the department and of the police force of the department.

This is in sharp contrast to the charters of most New York municipalities which are "long form", that is, they define and delineate in detail the scope of permissible official action and administrative conduct.

In the Matter of Wardon, supra, there was an attempt to alter by initiative the Newburgh City Charter to provide for minimum annual salaries for members of the Police Department. The Appellate Division of the Supreme Court

(Second Department) by a divided court upheld the dismissal on the merits of the petition for an order under Section 16 of the City Home Rule Law and Section 335 of the Election Law summarily determining objections to the form, sufficiency, and validity of a petition for the submission to the electors of Newburgh of a proposed charter amendment. In holding the law proposed by the petitions to be an appropriate charter amendment, the court noted that the long form charter in effect included an administrative code within it. The short form charter of New York City and its separate Administrative Code, was specifiically distinguished. In municipalities such as Newburgh the proposed local law on procedures for handling civilian complaints against the police might indeed be an appropriate amendment to the city charter. See, for example, Matter of Warden, supra, Hacker v. Common Council, Ithaca, supra; however, it is entirely inappropriate as an amendment to the charter of New YorkCity which is a concise statement embodying broadly phrased grants of power and general principles.

A previous attempt by the Patrolmen's Benevolent Association to characterize a proposal similar to that presently at issue as an amendment to the New York City Charter was rebuffed by the Court of Appeals in Matter of Astwood v. Cohen, 291 N.Y. 484(1944). On that occasion, the P.B.A. proposed a local law by initiative providing for a salary bonus to policemen and firemen, which law purported to be an amendment to the city charter in

accordance with the predecessor of Section 37 of the Municipal Home Rule Law, Section 19-A of the City Home Rule Law,

A mandamus action was brought under Article 78 of the Civil Practice Act to compel the Board of Elections to disregard the P.B.A.'s petition and omit the proposed local law from the ballot, on the theory that the law proposed by the petition was not an appropriate amendment to the charter. The Court of Appeals, in affirming the orders of the lower courts granting the mandamus stated,

> Even though sections of the Municipal Home Rule Law should be construed liberally according to Section 31/[Note: Now Section 35]17, liberal construction may not, however, ignore the legislative mandate that only amendments to the charter, as distinguished from other laws, may be enacted by the process of initiative and referendum.(Id. at 488)

The decision went on to note that the specificity of the proposed law made it an appropriate amendment to the short form charter of New York City. The law here proposed by the P.B.A. is equally inappropriate as an amendment to the city charter and invalid for precisely the same reasons.

POINT III

THE PROPOSED LOCAL LAW WOULD IN FACT ONLY BE APPROPRIATE AS AN AMENDMENT TO THE ADMINISTRATIVE CODE

Although drawn in the guise of a charter amendment the proposed local law would, in fact, only be appropriate as an amendment to the Administrative Code. This is precisely the characterization given a proposed local law too detailed to be an appropriate charter amendment by the Court of Appeals in Astwood (Id. at 489). Unlike the Charter, which makes no mention of procedure for discipline within the police department, the Administrative Code devotes an entire detailed section to this subject. (Section 434a-14.0, New York City Administrative Code). In fact, Part (E) of this section of the Code includes language virtually identical to that of Section 440a of the proposed local law. (See appendix I.)It is clear therefore that provisions such as that proposed by the P.B.A. are precisely the "questions of administrative detail" envisioned by the New York City Charter Revision Committee of 1936 as properly within the scope of the Administrative Code. See Report of the New York City Charter Revision Commission of 1936, page 41.There is no statutory authority for amending the Administrative Code by initiative Action.

POINT IV

THE POWER TO INITIATE LEGISLATION SHOULD NOT EXTEND TO PURELY ADMINISTRATIVE FUNCTIONS

Under the general provisions of Section 434a of the City Charter of New York, Supra, and the more specific provisions of Section 434a-10.0 of the Administrative Code, supra, the police commissioner is empowered to appoint a civilian complaint review board. Pursuant to these provisions, the commissioner issued General Order No. 14 on May 2, 1966, amended on May 17, 1966, which established a complaint review board comprised both of civilians and members of the police force. The question of the validity of the commissioner's power to issue such an order has already been determined by the New York State Supreme Court. See Cassese v. Lindsay, New York Law Journal, June 24, 1966, page 12. There, the Court refused to enjoin the Police Commissioner from establishing the review board as he saw fit, upholding the power of the police commissioner to issue General Order No. 14. Justice Murphy in his opinion noted specifically the " ... right of the agency chief to control and administer his department .... It is she the province of any individual, or organization, or indeed, the Court, to dictate to an appointed public official how he may best command his department." (Cassese v. Lindsay, ibid.) In another recent New York decision involving referendum issues the Court warned that " a transparent attempt to formulate a ... referendum on some technical basis will not suffice, if in fact the attempt is really to

avoid governmental responsibility and shidt the burden of decision to a public poll." See Kupferman v. Katz, supra, at 774. In other words, the Courts have expressed a strong reluctance to permit referenda to interfere with legally authorized administrative acts.

> It is quite generally held in this country that the power to initiate legislation under statutes provising for the initiative and referendum in the conduct of municipal affairs does not extend to such functions of city government as purely administrative in character. (People v Kapp, 189 NE 920)

The tendency to protect administrative decisions from review by referendum and initiative action stems from a concern that a minority of people may seek to use such devices deliberatly to interfere with and delay the orderly performance of governmental functions by the proper authorities. Lynch v. O'Leary, supra, at 593.

"To allow laws dealing with referendum in the conduct of municipal affairs to be invoked to annul or delay executive or administrative action tends to delay and in some cases to annul the prompt and efficient administration of city affairs." Read v. Scottsbluff, 139 Neb.418, 297 N.W. 669 (1941).

In other words, referenda and initiative were never intended as devices to inquire into and review acts reflecting the expertise and experience of administrative officials where such acts are necessary to the effective and continuing functioning of their departments. In fact, the Court of Appeals, in

Astwood v. Cohen, supra, adopted precisely that test in ruling that administrative decisions by public officials and agencies cannot be routinely subjected to public referendum. The decisive factor was whether the administrative act in controversy could be performed without legislative approval:

> Administrative action which may be taken without legislative authority or approval was not intended to be taken by direct action of the voters .... The tradition of representative, democratic government is too strong to permit an inference that the legislature intended to extend the exceptional process of direct legislation to details of administration unrelated to a amendments of the Charter, whether regulated by local laws and ordinances or managed by responsible administrative agencies. Matter of Astwood v. Cohen, supra at 491.

The Police Commissioner's General Order No. 14 was not subject to legislative approval and was validly issued without it. This we know from the decision of the New York Supreme Court in Cassese v. Lindsay, supra.

The present proposal of the petitioners to bring the matter of a civilian complaint review board before the electorate clearly constitues an attempt to interfere with and override the duly constituted power of the police commissioner to control the administration and discipline of the department. Therefore, initiative action on this matter is unlawful.[6]

POINT VI
THE CITY CLERK WAS OBLIGATED TO CERTIFY THAT THE PETITIONS FAIL TO COMPLY WITH THE REQUIREMENTS OF LAW

Section 37 of the Municipal Home Rule Law, under which the proposed amendment has been filed, requires the City Clerk to issue " a certificate that the petition complies or does not comply with all the requirements of law...". City Clerks have previously acted pursuant to this provision by certifying that the petitions filed with them were legally invalid as a matter of law. For example, Lynch v. O'Leary, supra; Noonan v. O'Leary, supra.

In view of the legal deficiencies of the proposed law and pursuant to the authority vested in him by Section 37 of the Municipal Home Rule Law, the City Clerk certified that the petitions at issue herein do not comply with the requirements of law.

A P P E N D I X

P A R T (E) o f t h e p r o p o s e d amendment section 440:

Prosecution: Right to Hearing: Notwithstanding anything conatined to the contrary, this section shall not be construed to prevent investigation, or prosecution of members of the Police Department for violations of law by a duly constituted court having jurisdiction, a grand jury, district attorney, or other law enforcement agency; nor shall this section be construed to permit a member of the Police Department to be fined, reprimanded, removed, suspended or dismissed, except upon written charges, after such charges have been examined, heard, investigated by the Commissioner, one of his deputies, or the assistant to the Commissioner.

P A R T (B) o f s e c t i o n 434a-140 of the New York City Administrative Code under the heading "Discipline of members."

b. Members of the force, except as elsewhere provided herein, shall (be fined, reprimanded, removed, suspended or dismissed) from the force only on (written charges made or preferred against them after such charges have been examined, heard and investigated by the commissioner, one of his deputies or the assistant to the commissioner, upon such reasonable

notice to the member or members charged, and in such manner or procedure, practice, examination and investigation as such commissioner may, by rules and regulations, from time to time prescribe.

(Subd. b as amended by L.L. 1955, No. 30, May 6.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

JULIA ROSADO, et al., :

Plaintiffs, :

-against- :

GEORGE K. WYMAN, et al., : 69 Civ. 355

Defendants. :

----------X

MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT.

Statement

This memorandum is submitted in support of defendants' motion for summary judgment in this action seeking an injunction against enforcement of New York Social Services Law § 131-a, enacted by Laws of 1969, Ch. 184, to take effect July 1, 1969, and a judgment declaring its invalidity. Since plaintiffs asserted the unconstitutionality of the statute, in addition to other contentions, this Court (Weinstein, J.) ordered that a three-judge Court be convened pursuant to 42 USC § 2281. The Court in addition issued a temporary restraining order against the

enforcement of the statute. Both sides have moved for summary judgment.

Facts

This action challenges the validity of the legislative enactment which establishes a schedule of monthly grants to welfare recipients. New York has imposed a responsibility for years on public welfare officials, "insofar as funds are available for that purpose, to provide adequately for those unable to maintain themselves" and to determine the adequacy of assistance provided "in accordance with standards of public health in the community with due regard for variations in cost from time to time and between localities" (Social Services Law § 131[1, 3]). Pursuant to this statutory standard, the New York State Department of Social Services has established standards of assistance and, from year to year, conducted cost of living surveys and adjusted such standards in accordance therewith. Thus in August, 1968, the Department, employing Bureau of Labor Standards cost of living statistics as well as its own statistical material based on its actual pricing of items throughout the State, readjusted the schedule of grants (Aff. of G. W. Chesbro, pp.2-4; Exhs. "A" and "B"). The

resultant standard of need was calculated and the State divided into three areas on the basis of the average cost of utilities. The three districts each had standards varying by a few dollars per month. Monthly cash allowances, exclusive of rent and fuel for heating, which are paid separately to the welfare recipient, were calculated based on the number of persons in the family and the age of the oldest child, computed in two-year intervals (Exhibit "A"). Thus, in the area denominated SA-1 (New York City, Dutchess, Greene, Monroe, Nassau, Suffolk, Ulster and Westchester Counties), a family of four received an allowance ranging from $152.00 where the oldest child was five or under to $221.00 where the oldest child was sixteen or over. The mean age of children in families participating in the Aid to Dependent Children program (herein "ADC"), by far the major component of all welfare recipients in this State*, was calculated in a chart (Exh. "E") which indicated that in a family of four this mean age of oldest child was 10.09 years (Exh. "F"), so that the average monthly allowance (again exclusive of rent and fuel) received by ADC families

*In New York State the ADC program encompasses 886,860 of 1,210,601 welfare recipients.
In New York City 657,089 received ADC allowances out of 889,262 total welfare recipients.

after the adoption of the August, 1968 cost of living adjustment was $191.00.

New York, like every state, receives federal funds through the ADC and other programs administered by the United States Department of Health, Education and Welfare (herein "HEW") under the Social Security Act (42 USC §§ 601, et seq.)*. This program, established in 1935, provides certain standards which the States must meet in order to be eligible for participation therein. Although § 601 requires the Secretary of HEW to approve state plans, there is no federal regulation whatever of the amount a State must pay, or of the standard of need, established by the State. This is dramatically demonstrated by the chart (Aff., Exhibit "I") showing the enormous disparity in sums paid by the various states under the ADC program -- ranging from $71.75 per average recipient in New York, through $58.25 in New Jersey, the next highest State, to $8.50 in Mississippi (average monthly payment per recipient of ADC, June, 1968). The legislative history of the Social Security Act (S. Rep. 628, 74th Cong., First Sess. 4 [1935]) candidly notes that "[l]ess Federal control is provided than in any recent Federal aid law". As the

*Social Security Act sections will be referred to herein as § 601, § 602, etc., their numbers in 42 USC. Section 601 is also known as § 401 of the Social Security Act; § 602 is § 402, etc.

Supreme Court noted in King v. Smith, 392 U.S. 309, 318-319 (1968), "each State is free to set its own standard of need and to determine the levels of benefits by the amount of funds it devotes to the program".

In 1968 Congress added to § 602(a) the provision on which this suit is primarily based. That sub-section provides:

> "(23) [The States shall] provide that by July 1, 1969, the amounts used by the state to determine the needs of individuals will have been adjusted to reflect full changes in living costs since such amounts were established and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted".

This embodied in federal law the cost of living adjustment to its standard of need which New York has made periodically through the years by conducting re-pricing surveys annually, employing Bureau of Labor statistics, and re-adjusting its allowance schedules whenever prices have increased 2% or more (Aff., pp.2-4). Indeed, § 602(a)(23) is severely limited in scope from the bill originally introduced by HEW in Congress and, as enacted, only requires the states to readjust

their standards of need and maximums paid once during the period ending July 1, 1969.

When HEW introduced the bill (H.R. 5710, 90th Cong., 1st Sess.) which eventually became § 602(a)(23), it contained requirements that all states, by July 1, 1969, pay a benefit equivalent to their full standard of need, which many states now fall short of doing. See Exh. "C", which shows that as of April, 1968, twenty-eight states paid less than their own professed standard of need.* The bill also required each state to review its standards annually. Detailed discussion of this legislative history is found in the amicus brief of HEW in Lampton v. Bonin, D.C.E.D. La., Civ. 68-2092, portions of which are annexed to plaintiffs' memorandum of law in support of their motion for a preliminary injunction, and other portions of which are annexed as an appendix to this memorandum.

As enacted, however, the statute excluded these provisions, which would have fundamentally altered the structure of public assistance in this country and done

*As this chart shows, in Alabama, for example, the standard of need for an ADC family of four, including rent, is $177.00 but the actual amount paid is only $89.00. And in Missouri, the standard of need of $305.00 exceeds New York's, but the actual amount paid is only $124.00, while New York pays its full standard of need -- $278.00. Mississippi pays $55.00

much to reduce the vast gap in payments from state to state. It does no more than require that states adjust their standard of need, as well as any maximum imposed on the amount paid (New York had no such maximum), by July 1, 1969. This New York plainly did in its 1968 cost of living adjustment (Exh. "A").

The 1969 Legislature in adopting the section here challenged, for the first time embodied the monthly allowance schedule in the statute. It employed, however, the 1968 computation of allowance based on the cost of living adjustment which fulfilled the requirements of § 602(a)(23). And it for the first time made a legal requirement in New York the flat grant approach to public assistance payments, under which a monthly sum is computed and used as a basic allowance, encompassing all expenses of the welfare recipient except rent and fuel for heating which continued to be paid separately. Special grants for expenses such as moving, special diets, etc., which were administratively authorized under the earlier law are eliminated and the monthly allowance, increased somewhat, is deemed to include all such sums. The Department of Social Services, in addition, is free to provide for moving expenses, apartment security deposits, etc., over and above the grants on a direct purchase of services basis (Aff., pp. 9-10).

This enactment represented incorporation in statute for the first time in New York of the flat grant concept, regarded as the most enlightened and progressive method of public assistance payment, eliminating the necessity of the welfare recipient applying for individual items -- often a degrading and time-consuming process -- and thereby enhancing his dignity, increasing his ability to budget and self-respect, and freeing case workers from bookkeeping decisions in order to allow them to devote their time to counseling of recipients. The New York City Department of Social Services in 1968 established a pilot demonstration project in which it used flat grants on a cyclical basis, replacing special grants for many items of clothing and household materials. In requesting approval of this project from the Department of Social Services, the City Department specifically sought permission to "[r]elieve front-line agency personnel from the cumbersome, demeaning, conflict-ridden, idiosyncratic, and administratively costly process of client-by-client and item-by-item decision making" (Aff. Exh. "D", p. 2).

The affidavit of Commissioner Chesbro demonstrates the method of establishing the levels set forth in the schedules contained in the statute. The mean age of the oldest child in each size family was ascertained (Exh. "E"). The mean age rather than the median was used as this produced a more generous result in most cases (See Exh. "F"). The amount of allowance provided in 1968 for a family of each size in cases where the oldest child was of the mean age was then adopted as the allowance for that size family. Where the mean age contained a fraction, the older age was used, again working a benefit to the recipient. Thus, for a family of four, which received amounts ranging from $152.00 to $221.00 (depending upon the age of its oldest child), the mean age of such oldest child was found to be 10.09 and, therefore, $191.00, the figure where the oldest child was ten or eleven, was used as a base amount. To this was added $17.00 -- the amount necessary to bring the allowance up to $35.35, the subsistence level determined by the United States Government for New York City for a family of four (Aff., p.7), or a monthly allowance of $208.00. The allowance for the remainder of the state was determined at a differential of $25.00 for a family of four (Aff., p. 7). As the

computations of the Department show, these levels, based on the previous allowance including the cost of living increases of 1968, will result in slightly increased benefits to families with younger children and slightly decreased benefits to those with older children (Aff., p.9). These adjustments exclude rent and fuel which are paid separately, as well as the additional items anticipated to be paid on a purchase of services basis by the Department (Aff., pp. 9-10).

The Statute

Social Services Law § 131-a in pertinent part provides:

> "1. Any inconsistent provision of this chapter or other law notwithstanding, social services officials shall provide home relief, veteran assistance, old age assistance, assistance to the blind, aid to the disabled and aid to dependent children, to eligible needy persons who constitute or are members of a family household, in monthly or semi-monthly allowances or grants in accordance with standards established by the regulations of the department, but not in excess of the schedules included in this section, less

any available income or resources which are not required to be disregarded by other provisions of this chapter. Such schedules shall be deemed to make adequate provision for all items of need in accordance with the provisions of section one hundred thirty-one, exclusive of shelter and fuel for heating, for which two items additional provision shall be made by the social services districts in accordance with the regulations of the department.

2. The following schedule of maximum monthly grants and allowances shall be applicable to the social services district of the city of New York:

Number of Persons in Household

One	Two	Three	Four	Five	Six	Seven
$70	$116	$162	$208	$254	$297	$340

For each additional eligible needy person in the household there shall be an additional allowance of fourty-three dollars monthly.

3. The following schedule of maximum monthly grants and allowances shall be applicable to all other social services districts:

Number of Persons in Household

One	Two	Three	Four	Five	Six	Seven
$60	$101	$142	$183	$224	$257	$290

For each additional eligible needy person in the household there shall be an additional allowance of thirty-three dollars monthly."

POINT I

PLAINTIFFS FAIL TO PROPERLY INVOKE THE JURISDICTION OF THE FEDERAL COURTS. NEITHER 28 USC §§ 1331, 1343 NOR 42 USC § 1983 WARRANT THE DECLARATORY JUDGMENT AND INJUNCTION SOUGHT HERE.

While, as we shall show, the State fully met the requirements of § 602(a)(23) and the equal protection clause in enacting § 131-a, there exist the most serious jurisdictional defects which at the outset mandate dismissal of the suit.

Plaintiffs rely on several statutes in invoking the jurisdiction of this Court. The Court itself questioned whether it had jurisdiction (Tr. 4/15/69) and, we submit, its doubts were well-founded.

28 USC § 1331 is a slender reed on which to support this action. That section requires a controversy arising under the constitution, laws or treaties of the United States and involving $10,000 or more. It is beyond dispute that the monetary jurisdictional requirement is to be computed from the standpoint of the plaintiffs' injury. Teeval, Inc. v. City of New York, 92 F. Supp. 827 (S.D.N.Y. 1949). It must be computed on basis of "matter directly in dispute in any particular cause" and not on its collateral effects. Quinault Tribe v. Gallagher, 368 F. 2d 648 (9th Cir. 1966), cert. den. 387 U.S. 907 (the "value of right sought to be gained") (id. 654). Here, where the plaintiffs have been carefully culled out of

recipients, in an attempt to find persons who will receive smaller allowances under the statute, the plaintiff alleging to lose the greatest amount (Duffy) will, at her own figures, lose $174.40 on a monthly basis (Complt., p. 13) -- and even this amount represents the alleged reduction in allowance of her entire family, a family of ten, of which only a part is attributable to her. Assuming all the reduction were attributable to her, it would take four years and ten months before this reduction amounted to $10,000 - this presupposing no difference in the real benefits received by her resulting from food stamps, purchase of services, etc. These figures also ignore the payment of rent and fuel which become relevant here, although paid separately, where the claim is of non-compliance with a statute requiring adjustment in allowance based on cost of living. This illustrates the speculative, conjectural nature of plaintiffs' attempts to satisfy/the $10,000 jurisdictional prerequisite. And such speculation is impermissible here. Carroll v. Somervell, 116 F. 2d 918 (2d Cir. 1941).

It is manifest that the plaintiffs' claims of loss of individual welfare benefits may not be aggregated for the purpose of reaching the monetary requirement. Snyder v. Harris, 37 L.W. 4262 (3/25/69); Fuller v. Volk,

351 F. 2d 323 (3rd Cir. 1965); Alterman Transp. Lines, Inc. v. Public Service Commission, 259 F. Supp. 486 (M.D. Tenn. 1966), aff'd 386 U.S. 262, reh. den. 1014. Welfare is a privilege for which an individual must apply and satisfy specific standards in order to qualify. There is plainly here no "single title or right in which [the plaintiffs] have a common and undivided interest." (Snyder, supra, at 4263). As the Supreme Court held, "to allow aggregation of practically any claims of any parties that for any reason happen to be brought together in a single action * * * would seriously undercut the purpose of the jurisdictional amount requirement" (4264-4265).

The class action device is plainly utterly insufficient as a means of breaching the jurisdictional sine qua non of § 1331.*

Plaintiffs' citation of 28 U.S.C. § 1337 (Complt., p. 3) can be no more than a make-weight. That section refers to suits relating to trade and commerce and is thus inapplicable here.

*The legitimacy of this suit as a "class action" (R. 23, FRCP) is itself open to serious question, at least as to the claimed conflict with § 602(a)(23), since admittedly not all welfare recipients will be detrimentally affected by the statute and thus the extent of plaintiffs' "class" is so nebulous as to render the co

28 USC § 1343, on which plaintiffs more seriously rely, permits an action to redress deprivation under color of state law of any right, privilege or immunity secured by the Constitution or an Act of Congress providing for the equal rights of citizens (§ 1343[3]). This section was enacted to fortify the Fourteenth Amendment. Hackin v. Lockwood, 361 F. 2d 499 (9th Cir. 1966), cert. den. 385 U.S. 960. It has been consistently held limited to cases involving racial discrimination and closely related matters, concededly not involved here. City of Greenwood v. Peacock, 384 U.S. 809 (1966); Georgia v. Rachel, 384 U.S. 780 (1966). See also New York v. Galamison, 342 F. 2d 255 (2d Cir. 1965), cert. den. 380 U.S. 977, construing identical language in 28 USC § 1443(2) permitting removal of prosecutions to federal courts where violating a "law providing for equal rights" is involved.

The claims asserted here are claims that plaintiffs will suffer a loss of welfare benefits through an asserted prospective reduction in their allowances. There is no such civil right involved as would warrant the invocation of § 1343(3), repeatedly held inapplicable to matters of this nature notwithstanding invocation of the equal protection clause by the plaintiffs. Core v. Commissioner, SSA, 270 F. Supp. 537 (D.C. Md. 1967) (inappl. to employment);

Clark v. Wash., 366 F. 2d 678 (9th Cir. 1966) (right to practice law); Howard v. Higgins, 379 F. 2d 227 (10th Cir. 1967); Booth v. Gen. Dynamics Corp., 264 F. Supp. 465, 470 (N.D. Ill. 1967).

Moreover, § 1343 may not in any event be used as a vehicle to raise claims of a monetary nature. Gray v. Morgan, 371 F. 2d 172 (7th Cir. 1966); Abernathy v. Carpenter, 208 F. Supp. 793 (W.D. Mo. 1962), aff'd 373 U.S. 241; Alterman Transp. Lines, Inc. v. Public Service Commission, supra, 259 F. Supp. 486, 492 (aff'd 386 U.S. 262).

It would be ludicrous to describe § 602(a)(23) as "an Act of Congress providing for the equal rights of citizens" within § 1343(3). In fact it fortifies the utterly unequal scheme of welfare allowances which exists in the various states and which has been left untouched by Congress, and under which New York and a few other states pay ADC allowances vastly higher than those of other states (See Exhs. "C", "M", supra) -- and a majority of the states are actually permitted to pay less, in some cases for less, than their own announced standards of need. As we have seen, while New York pays an average of $278.00 (including rent and fuel for heating) to a family of four on ADC, Alabama pays $89.00 and Mississippi $55.00.

POINT II

NEW YORK'S REASONABLE STANDARD OF NEED AND ITS HIGH LEVEL OF PAYMENTS UNDER ITS AFDC PROGRAM ARE IN FULL COMPLIANCE WITH THE REQUIREMENTS OF § 602(a)(23) SO AS TO MAKE IT ELIGIBLE TO RECEIVE FEDERAL FUNDS; BUT, IN ANY EVENT, THE ULTIMATE VALIDITY OF NEW YORK'S PROGRAM FOR AID TO DEPENDENT CHILDREN IS NOT AFFECTED BY THE PERMISSIVE PROVISIONS OF THE SOCIAL SECURITY ACT GRANT-IN-AID PROGRAM.

A. 1968 Compliance.

The up-dating of standards of need which is to be done between January 2, 1968 and July 1, 1969 as a pre-requisite to federal funding under § 602(a)(23) was complied with by New York as a matter of course on August 23, 1968 when a new State standard was adopted (Aff. Exh. "A") pursuant to annual repricing of the approved standard. The list of items which make up the standard are continually reviewed by New York's Department of Social Services which uses professional materials from many sources including, for instance, those from the United States Department of Agriculture. The standard approved by the Department of Health, Education and Welfare in 1968 was a current list of products presently available in the stores of the State (Aff. Exh. "B"). The State's home economists reprice the items on the list every May. If there

is an increase in price of more than two percent, the standard of need is raised to meet the current prices. This was done in 1968 during the 18-month life of § 602(a)(23), which expires July 1, 1969.

Since New York pays the full standard of need, the requirement that dollar maximums be adjusted to meet that need was not applicable. However, the amount paid in New York was increased to fully meet the revised standard and the new State plan was approved by HEW. Thus, New York has complied with the statute on which plaintiffs rely.

Since this statute expires on July 1, 1969, which is co-incidentally the effective date of New York's § 131-a (July 1 is a date frequently used for the inception of New York legislation, falling after the adjournment of this Legislature and give the defendant Department of Social Services and its local counterparts three months to effectuate its changes), the federal law has no effect on legislation after that date. Congress specifically rejected a provision which would call for periodic up-dating of state standards of need. See the excellent discussion of legislative history contained in HEW amicus brief, App. pages 9-11. By so doing, the intent of Congress is clear -- to limit the effect of §602(a)(23) to require one up-dating. The reason that 18 months was allowed for a state to achieve its revisions was to insure that all state legislatures

would meet during that period. HEW amicus brief, App., pages 9-14. In its brief, HEW explains that § 602(a)(23) does not preclude contrary legislative action by the States after July 1, 1969 (pages 3, 12). The language of § 602(a)(23) does not even require up-dating by states which have raised their standards since they were first established. However, the HEW amicus brief suggests that the up-dating must be done after January 2, 1968 (id. at page 13). Such a discussion with regard to New York is completely irrelevant since New York has annually repriced its standard of need in the absence of a federal requirement to do so and has repriced that standard within the 18 months covered by § 602(a)(23). Plaintiffs suggest that § 602(a)(23) requires up-dating which would reflect the cost of living on July 1, 1969. The language of the statute completely refutes this interpretation since it requires that the State do the up-dating by July 1, 1969. It would be impossible to have cost of living figures as of July 1, 1969 and legislation which reflected those figures by July 1, 1969. Again, the HEW amicus brief clarifies the intent of Congress and explains that any cost of living revision between January 2, 1968 and July 1, 1969 fulfills the requirement of § 602(a)(23). (See App. pp. 12-14).

B. 1969 Compliance.

Thus, § 131-a is not affected by § 602(a)(23) with which it is alleged to conflict. They do not govern the same period of time, particularly since New York had already complied with the federal statute. In any event, § 131-a does not violate the standards of § 602(a)(23). On the contrary, it is of no consequence in assessing New York's compliance with the federal up-dating statute, irrespective of its effective date. The federal statute has its principal effect on revision of standards of need. The 1969 statute utilizes the 1968 revision, since the May, 1969 repricing has not yet begun. Section 602(a)(23) governs the level of payments only in states which impose dollar maximums. New York is not one of those states, a list of which is attached to the HEW amicus brief (App., appendix B). Even if New York had imposed dollar maximums in § 131-a, the limitations of § 602(a)(23) would not affect this enactment since the imposition would be the first time and would not impose a reduction of dollar maximums.

A dollar maximum is a rigid ceiling placed on the amount a family may receive which applies irrespective of the standard of nedd. Section 131-a does not impose dollar maximums, since it provides for the full standard of need, does not place a limit on the amount paid for rent and does not place a ceiling on payments per family. Of course, the grants are stated in dollar amounts.

This is true of any welfare statute since the standard of need is set in dollar amounts. Therefore, New York, which has always paid 100% of standard of need, has set its payments in dollar amounts. Similarly, states which pay percentage of standard of need express their payments in dollar amounts, just as states who impose dollar maximums express those payments in dollar amounts. This fact illustrates the extremely limited effect § 602(a)(23) has on the level of payments made by the states. Since it is conceded by everyone that any state may reduce its payments to AFDC recipients by "ratable reductions", which means by percentages, a state can achieve any dollar level it chooses in payments by calling them ratable reductions. Nevertheless, the schedule of dollar payments contained in § 131-a does not refer to the full payments made to individuals. In addition to that amount, every family's check is increased by the amount of rent and fuel for heating actually paid. There is no limitation on that amount and therefore no dollar maximum in New York State. A contrast with New York's provision is the dollar maximum limitation contained in the Maine AFDC program which was the subject of an attack in Westberry v. Fisher, ___ F. Supp. ___ (D. Me. March 21, 1969), 37 LW 2573 (April 15, 1969). Maine's method of assessing the payment to large families was held unconstitutional in that case. The maximum payment to one family of whatever size was set at $300. The problem brought to the Court's attention by the Westberry family was that earnings were not subtracted from the standard of

need established by Maine, but from the dollar maximum payment, thus substantially prejudicing the Westberrys and their ten children. However, New York does not have a dollar maximum which prejudices large families and, indeed, does not put a dollar maximum on payments at all.

The enactment of § 131-a does not affect New York's compliance with § 602(a)(23). The new schedule of payments makes two basic changes in New York's program. It eliminates a differential of payment based on the age of the oldest child in a family and eliminates grants for special needs. Both parts of the program were administratively cumbersome and their elimination produces savings in administrative costs as well as possibly reducing New York's average payment per AFDC recipient.

HEW has no requirement that a state differentiate on the basis of the age of children and the formula developed by New York to pay more because of the age of the oldest child certainly was not a pre-requisite for federal aid.

The elimination of special grants to which plaintiffs devote so much attention has no relevance to the question of compliance with § 602(a)(23) since those payments were over and above New York's payment of 100% of its standard of need. The Social Security Act does not require payment of 100% and payment of more is totally gratuitous on the part of the State. It well may be that individuals who understood the law with regard to special grants and were able to qualify frequently for special grants will receive less aid under § 131-a than they had previously. It also is true that the State no longer requires that the individual understand the complicated administrative mechanisms in order to receive payments to which he is entitled. This eliminates not only administrative expense, but time, effort and emotional expense on the part of recipients. As we have stated above, the elimination of special grants is a forward looking program. Of course, if the financial realities in the State budget were othersie, New York might have exceeded its standard of need; but, a state is not required to pay at any specific level and certainly not more than 100% of the standard of need.

To the extent that the new standard involves a simplification, it is not interdicted by the federal regulation implementing § 602(a)(23) (45 CRF 233.20, 34 F.R. 1394 [1969]).

Subdivision (a)(2)(ii) refers to "a consolidation of the standard (i.e., combining of items)". The simplification of New York's standard of need has nothing to do with the content of the standard.

Finally, it is impossible at this stage to assess the level of payments to any individual or any class of individuals because the administrative program which will be developed in reliance on the legislative program has not yet been promulgated. This is through no delay by the part of defendants, since the Legislature still sits and many amendments to the AFDC program in New York State are presently pending. In the hearing on the issuance of a temporary restraining order, Deputy Commissioner Louchheim testified that the Department is preparing plans to provide a more extensive purchase of services program which would, to some extent, parallel the eliminated special grants. Thus, for instance, security payments to landlords, moving expenses, homemaker services, telephones, special diets, etc. might be provided by the Department paying for the services directly, rather than including an additional sum in the allowance to the recipients. Finally, it should be remembered that many in the class which plaintiffs seek to represent will receive a higher level of payments than they presently receive -- as with families in

child is under the age of eleven. To some extent, this increase will compensate for special grants for layettes for infants and maternity wardrobes for pregnant mothers since the majority of families who have benefitted will tend to be those in which the oldest child is under eleven.

As we have noted, § 602(a)(23) deals principally with standards of need and has only a peripheral effect on levels of payment. In light of the permissive federal system which allows shockingly low levels in some jurisdictions, its language must be strictly construed. For an illustration of the diverse levels of payment permitted, see Aff., Exhs. "C", "I", "J" and "K". Also see King v. Smith, supra at 319 n. 15. The diversity by which the federal government determines its level of contribution to the various states is not in any way related to the level of payments and is certainly not designed to produce the highest level of payments. For instance, New York receives the lowest possible contribution, although it pays more per AFCD recipient than any other state. Aff. Exhs. "I", "M". Indeed, the only specific amount referred to by the federal regualtions is the sum of $17 per recipient which is the basis for federal

participation in the program.* By contrast, New York provides $70 plus rent and fuel for heating as paid.

An interpretation of § 602(a) (23) that would hold New York's substantial level of payments invalid while allowing other states to pay small fractions of New York's amount might well raise a problem of equal protection. Such a challenge has already been made against the federal system. Essex County Welfare Board v. Cohen, ____ F. Supp. ____ (D.N.J. March 19, 1969).

*The Federal funding of AFDC programs is determined by a formula described in the Social Security Act 42 USC § 603 and more particularly in the Handbook of Public Assistance Administration, Part V, Sections 2230, 2231 and 2233.

Section 2231 provides that the federal government pays 14/17 of the first $17 per recipient in aid to families with dependent children. Payments above this amount, and up to $30 maximum per recipient, are formulated by the Secretary of Health, Education and Welfare applying a formula which relates the State's per capita income to the national per capita income in the following manner:

> "The Federal percentage is '100 per centum less the State percentage'; and the State percentage 'bears the same ratio to 50 per centum as the square of the per capita income of such state bears to the square of the per capita income of the United States".

This percentage will range from a minimum of 50 per cent to a maximum of 65 per cent. The current percentages in effect [illegible] found in Handbook of Public Assistance, Part V, Section [illegible] per cent under said

Thus the statute's limitation on the form of a reduction must be narrowly construed. Narrow construction is also mandated since New York could have substantially cut its level of payment by "ratable reductions" and cut payments far below $70 per month per recipient. Of course, plaintiffs in this case decidedly make no claim of unconstitutionality, except as to geographical inequality.

Plaintiffs seek support for their statutory interpretation by accusing the Legislature of being motivated by a desire to cut the costs of welfare. Courts may not examine the motivation of the Legislature. As we have demonstrated, the effect of § 131-a is well within the limits posed by § 602 (a) (23). And, what if, as plaintiffs contend, New York's Legislature was concerned with the costs of welfare? New York is the highest taxes state in the nation and New York City is the highest taxed locality. Welfare is the largest item in New York's budget and AFDC is the largest item in the welfare budget. More people receive AFDC relief in New York State than in any other state. New York's payment per AFDC recipient is the highest in the country. Indeed, New York's payment for AFDC per capita population is an astounding $39.15. It would be negligent for the Legislature not to attempt to streamline

this program to cut its bureaucratic costs and to insure that all recipients are treated equally to the extent possible. If we look to the motivations of legislatures, § 602(a) (23) would not be interpreted as plaintiffs would have it. While it is true that the legislation was passed, Congress substantially altered the meaningful statute which HEW had proposed, leaving only a one-time statute which was met by New York's full compliance.

Neither Congress, the federal administration nor the federal courts have ever set limits on the amounts states need pay welfare recipients. While legislation so providing has recently been introduced in Congress, and would undoubtedly be within Congress' power to enact, for the judiciary to promulgate levels of payment would strike at the heart of the separation of powers, especially when Congress has deliberately avoided preempting the field. See Snell v. Wyman, supra, 281 F. Supp. at 862-863.

C. § 602(a) (23) Does Not Govern The Ultimate Validity of State Statutes. It Is Only A Predicate For Federal Aid.

Even if § 131-a were in conflict with § 602(a) (23), that statute would not be invalid except as an acceptable plan for receiving AFDC funds from HEW. The federal AFDC program provides for grants-in-aid. It does not purport to preempt the field of welfare from the states. In King v. Smith, supra, the Supreme Court stated:

> "There is no question that States have considerable latitude in allocating their AFDC resources, since each State is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program." (318-19).

No one can claim that Congress has sought to occupy this field. Indeed, it has deliberately avoided a national plan for welfare and has refused to establish national standards (Aff. Exhs. "B", "I", "J", "K" and "M"), although it is a national problem. See Connecticut v. Thompson, ___U.S.___ (April 21, 1969), 37 LW 4333 (April 22, 1969).

Plaintiffs rely on King v. Smith as holding that a state welfare statute may be declared invalid if it conflicts with the Social Security Act (42 USC § 602) and they submitted as an exhibit the original November, 1967 order in that case as

er was issued

by the District Court since Mrs. Smith was represented by Martin Garbus, Esq., who is also an attorney for plaintiffs herein. That order expressly declared Alabama's regulation invalid on the grounds of unconstitutionality. The three-judge court in that case had held that the child plaintiffs were deprived of the equal protection of the law by reason of their mother's sexual relations with a man not their father.

In affirming that decision, the Supreme Court relied on the same facts and the same distinction, but did not reach the question of a constitutional deprivation. The Supreme Court relied on the definition of "parent" in the Social Security Act as precluding Mrs. Smith's casual paramour in that case. Therefore, the Supreme Court was never directly confronted with the question of the validity of Alabama's regulation in the ultimate sense.

However, the Supreme Court did apparently consider the question and seemed to rule that Alabama had a choice of invalidating its regulation or of losing federal funds. The holding in this regard is found on page 333, as follows:

> "The regulation is therefore invalid because it defines 'parent' in a [illegible] is inconsistent with

Federal Government, unless barred by some controlling constitutional prohibition, may impose the terms and conditions upon which its money allotments to the States shall be disbursed, and that any state law or regulation inconsistent with such federal terms and conditions is to that extent invalid. See Ivanhoe Irrigation District v. McCracken, 357 U.S. 275, 295 (1958); Oklahoma v. Civil Service Comm'n., 330 U.S. 127, 143 (1947). It is equally clear that to the extent HEW has approved any so-called 'man-in-the-house' provision which conflicts with § 406(a) of the Social Security Act, 42 U.S.C. § 606(a), such approval is inconsistent with the controlling federal statute.]"

The availability of this alternative was the principal reason that Justice Douglas chose to reach the constitutional question. In note 3 at page 335, he stated:

"Moreover, the Court's decision based on statutory construction does not completely resolve the question presented. The District Court, having found a violation of the Fourteenth Amendment, issued an unconditional injunction. Under the Court's opinion, however, Alabama is free to revive enforcement of its substitute parent regulations at any time it chooses to reject federal funds made available under the Social Security Act."

Oklahoma v. Civil Service Comm'n, cited by the majority, clarifies the Court's holding in this regard. Oklahoma there challenged the withdrawal of federal funds for highway construction because of the State's refusal to dismiss the Chairman of the Democratic State Central Committee from the State Highway Commission. The Court held that this was an appropriate use of the federal government's "...power to fix the terms upon which its money allotments of the states shall be disbursed." Id. at 143. It also held that Oklahoma could refuse to fire the Commissioner.

Since the major challenge in King v. Smith was on the constitutionality of the distinction and because the same issue involved a constitutional and a statutory challenge, the propriety of holding a state statute void for conflict with § 602 was not presented or argued. Here, New York has already moved to join Secretary Finch and the Department of HEW as additional parties defendant under Rule 19 of the Federal Rules of Civil Procedure. In denying the defendants' motion, the Court did not directly deal with the question of validity (as opposed to eligibility for federal funds) and the defendants have not briefed the question until now. Nonetheless, from the beginning of this litigation, we have raised the issue and on the basis of that fact alone, this case is distinguishable from King v. Smith. Furthermore, the Court struck down an Alabama regulation, not a

statute. In the instant case, plaintiffs attack a New York statute. Furthermore, they attack a statute of extraordinarily broad coverage. In King v. Smith, the regulation, while important, dealt with one aspect of eligibility for AFDC relief. Here, in contrast, § 131-a is the Legislature's plenary statute establishing allowances. To set it aside, particularly on the grounds here alleged, would far exceed anything done in any case relied on by plaintiffs and would indeed contravene the fundamental separation of powers as well as the federal system.

Another distinction between this case and King v. Smith is a pecuniary one. Alabama had been accepting federal money for 20 years during the time when this invalid regulation was in effect. Thus, to some extent, Alabama's regulation had been adopted by the Federal Government and its regulation had been inextricably entwined with the Federal Government's AFDC program. Furthermore, the regulations might have been conditioned on acceptance by HEW, while New York's statute is an independent enactment regulating New York's program in the future.

Finally, we return to the distinction between regulation of eligibility for appropriation and level of payments which, as we have discussed above, have been treated differently by the federal courts. No case cited by plaintiffs is a precedent for this suit which challenges, in toto, a statute regulating levels of payments. All cases cited by plaintiffs, including

King v. Smith, deal with rules regarding eligibility for any payment.

The fact that the validity of this statute is not before this Court requires dismissal of this action since plaintiffs have failed to join a responsible official of the Department of Health, Education and Welfare seeking to enjoin the Federal Government from contributing to New York's new plan. As we have discussed, New York's eligibility for federal aid is the only proper issue raised by the alleged conflict between § 602(a)(23) and § 131-a. Thus, without a responsible federal official, "a final decree cannot be rendered between the other parties...without leaving the controversy in such a situation that its final determination may be inconsistent with equity and good conscience." Turner v. Brookshear, 271 F. 2d 761, 764 (10th Cir. 1959). Such a federal official is described in Rule 19(a)(1) as one "in [whose] absence complete relief cannot be accorded among those already parties." Therefore, we moved to join the Federal Government, although it has refused to enter the fray and our motion was denied. But an order depriving New York of federal funds would have to run principally against HEW and only secondarily against the New York officials.

D. In Interpreting § 131-a, It Carries A Strong Presumption In Favor Of Validity.

Even when statutes are challenged as unconstitutional, there is a strong presumption favoring the statute (I.L.F.Y. Co. v. City Rent and R. Administration, 11 N.Y. 2d 480, 490 [1962]; Wasmuth v. Allen, 14 N.Y. 2d 391, 398 [1964], app. dism. 379 U.S. 11), and the courts do not pass on its wisdom (Ferguson v. Skrupa, 372 U.S. 726, 730 [1963]; Wasmuth v. Allen, supra; Olsen v. Nebraska, 313 U.S. 236, 246 [1941]). Where the statute is challenged as violating extremely limited and technical law, the presumption in its favor increases manyfold. When analyzed closely, plaintiffs' superficially clever argument under § 602(a)(23) reduces itself to a request for policy legislation such as the request which was denied in Snell v. Wyman, 281 F. Supp. 853 (S.D.N.Y. 1968). The policy sought to be enacted by plaintiffs in that case was of a far more limited sort than that requested by plaintiffs here. Plaintiffs plainly seek additional appropriations of State money from a federal court and deliberately framed their papers in order to obtain it from one judge, not three. This kind of action goes far beyond the power of the judiciary. Cf. Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 618 (1950). In Baker v. Carr, 369 U.S. 186, 217 (1964), the Supreme Court stated that a court may not consider

> "...a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

It is hard to imagine a more political ruling than one which orders additional appropriations from a state legislature.

POINT III

SECTION 131-A IN NO WAY VIOLATES THE EQUAL PROTECTION CLAUSE. THE DISPARITY IN ALLOWANCES AS BETWEEN NEW YORK CITY AND THE REMAINDER OF THE STATE IS A REGIONAL LEGISLATIVE DISTINCTION.

The provision in § 131-a for a somewhat greater level of allowances for recipients within New York City was just the sort of legislative distinction which the courts have repeatedly upheld on judicial review. There is nothing novel or unprecedented about varying levels of welfare allowances. Under the scheme which antedated § 131-a, the State was divided into three areas and levels of allowances varied between such areas. Moreover, as we have seen (Aff. pp.7,12-14), the real level of allowances varied widely within the State and in fact was much higher in New York City than elsewhere in the State.

Further, the Legislature and Department of Social Services were cognizant of the higher social costs of living in a great metropolitan center -- a fact to which the City of New York expressly referred in establishing, with State and HEW approval, its administration project under which special grants were eliminated (Aff. Exh. "D", p. 4). In addition, the State Legislature was plainly within the broad discretion allowed

under the equal protection clause to determine that living in such a great metropolitan center results in greater expectations among welfare recipients, a higher level of aspiration, need for more recreational facilities such as beaches, zoos, museums and parks, as well as a higher crime rate which require safety locks and greater losses due to theft and burglaries (Aff. p. 13).

In this context, it is idle to contend that a denial of equal protection vis-a-vis welfare recipients outside New York City exists -- and this is so where those recipients reside in Nassau County or in any other part of the State. The Legislature plainly had to draw the line somewhere and its determination to provide a separate standard in New York City was plainly a permissible exercise of its discretion. "The constricted test in this forum is one of minimal rationality." Snell v. Wyman, 281 F. Supp. at 863.
Matter of Hogan v. Rosenberg, -- N.Y. 2d -- (dec'd. March 6, 1969):

> "The Supreme Court has recognized that territorial discrimination as between different states and even as between different parts of the same state is not of itself violative of the equal protection clause, even if the state has no reasonable basis for making such a distinction."

The Supreme Court has consistently sustained state legislation against this sort of attack. Salsburg v. Maryland, 346 U.S. 545 (1954); McGowan v. Maryland, 366 U.S. 420, 426 (1966); Missouri v. Lewis, 101 U.S. 22 (1879). It is basic that "the Fourteenth Amendment does not prohibit legislation merely because it is special or limited in its application to a particular geographical or political subdivision of the state." Fort Smith Light Co. v. Board of Improvements, 274 U.S. 387, 391 (1927). See, also, Spatt v. City of New York, 14 A.D. 2d 30 (2nd Dept. 1961); DiPrima v. Wagner, 14 A.D. 2d 36 (1st Dept. 196-); aff'd. 10 N.Y. 2d 728; Adler v. Deegan, 251 N.Y. 467 (1929).

While plaintiffs have cleverly chosen Nassau County recipients as plaintiffs here, where the cost of living more nearly approaches that of New York City, this is not helpful to them. The courts have repeatedly upheld the right of the Legislature to determine that "the line must be drawn somewhere." Matter of Rublick v. Weaver, 9 Misc. 2d 619 (Sup. Ct. Queens Co. 1957), aff'd 4 N.Y. 2d 974; 9 N.Y. Jur. § 307, p. 208. A classification "having some reasonable basis" does not violate the equal protection clause merely because it is not made with mathematical nicety or because in practice it limits in some in equality. Lindsley v. National Carbonic Gas Co., 220 U.S. 61, 78 (1911); People v. Friedman, 302 N.Y.

The strong presumption of constitutionality (Ferguson v. Skrupa, 372 U.S. 726 [1963]; Olsen v. Nebraska, 313 U.S. 236, 246 [1941]) has not been impeached here.

CONCLUSION

SUMMARY JUDGMENT SHOULD BE GRANTED DEFENDANTS IN ALL RESPECTS.

Dated: New York, New York
April 29, 1969

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

ROBERT P. BURRUS, et al, Complainants vs. WOODROW W. WILKERSON, etc., et al, Defendants	CIVIL ACTION NO. 68-C-13-H

MEMORANDUM ON BEHALF OF COMPLAINANTS

ERWIN S. SOLOMON
Attorney-At-Law
Hot Springs, Virginia

STATEMENT OF THE CASE

The Court has asked plaintiffs to address themselves to two questions:

1) Why is McInnis v. Shapiro distinguishable from this case? and

2) What should the Court order look like if the Court accepts plaintiffs' contention that the present system of financing is unconstitutional?

McInnis v. Shapiro does not control the instant case.

The State of Virginia relies solely upon the recent case of McInnis v. Shapiro, 293 F.Supp. 327 (N.D. Ill., 1968), aff'd sub nom. McInnis v. Ogilvie, March 24, 1969, 37 U.S.L.W. 3350, ___U.S. ___. On the basis of the facts presented before this Court, a comparison of the complaints and the relief sought in the case before us and in McInnis, and an analysis of the constitutional theories of these cases, it becomes clear that McInnis does not control the instant case.

1. Discrimination based upon poverty, a major factor in the instant case, was not referred to by Plaintiffs in McInnis.

The Supreme Court has clearly stated that discriminations based solely on the wealth or poverty of a person are unconstitutional under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States where the deprivation of important rights is concerned. Classifications discriminating against a person due to his poverty in the areas of criminal appeals, Griffin v. Illinois, 372 U.S. 353 (1963) and Douglas v. California, 372 U.S. 353 (1963), in the area of voting rights (poll tax) in

Harper v. Virginia Board of Elections, 383 U.S. 663 (1966), have been stricken by the Supreme Court. No less important to our society than the right to a criminal appeal, than the right to participate freely in elections, is the right to an education free from the effects of discrimination based upon poverty.

That the right to an education is one of the most important civil rights of our society has been recognized in Brown v. Board of Education of Topeka, 347 U.S. 483 (1954), where the Supreme Court said:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."
> (347 U.S. 483, 493.)

In the area of educational opportunity such discrimination is no less reprehensible under the Constitution than the discrimination against the poor in Griffin, Douglas, and Harper.

In McInnis, no allegations as to the poverty of the plaintiffs were made and there was no mention of discrimination against the plaintiffs due to their poverty. Plaintiffs in the instant case allege and have proved that they are poor, their county is poor, and they are denied an equal opportunity for an education due to their poverty because of the necessary operation of Virginia law.

2. The disparities in education in Virginia and the resulting denial of equal educational opportunities are created by and exist because of the actions of Virginia.

The District Court opinion (the only opinion) in the McInnis case noted that the Illinois legislature was making a positive effort to deal with the disparities in education throughout the state and should be given a chance to work on the problem without court interference. In the instant case, the Virginia legislature has not shown any desire to deal with the problem.

In the instant case the State of Virginia has created a system whereby the counties have the major burden of expense and knowingly has allowed to continue this system of education in which exist disparities so great that some school districts, such as Bath County, are unable to provide even a minimal educational opportunity for their children. Even though its own statistics have long shown the inability of certain counties to support an adequate school system, and even though this case, which first went up through the Virginia courts, has put the state on notice of the problem, Virginia permits these inequalities to continue to the harm of Plaintiffs.

In the instant case all remedies on the state level, both in the courts and before the legislature, have been exhausted. In the current year Bath will be spending 93¢ out of every local tax dollar on education. Increased revenues cannot be raised from local sources due to the extreme poverty of the people in the county. The state knows of the poverty in the county and the inferior educational opportunity offered and refuses to help.

3. The complaint and the relief requested in the instant case is in no way precluded by the decision in McInnis.

The complaint in the McInnis case bases its whole theory and request for relief on the ground that expenditures for education must be made only according to the educational needs of the students. Paragraph 1. of the McInnis complaint reads as follows:

> "1. This is a civil action on behalf of individual plaintiffs and all others similarly situated for (i) a judgment declaring unconstitutional those portions of Ill. Rev. Stat. 1967, Ch. 122, Sect. 11-1, 11-6, 11-9, 18-1 through 18-4, 18-8 through 18-14, 34-22 through 34-29, 34-42 through 34-82, 29-5, Ch. 122 Arts. 17, 19, 32 and Ch. 85 Sect. 51 through 51.6 and any related provisions which provide for and permit the distribution of monies not based upon the educational needs of children."

The request for relief reads as follows:

> "WHEREFORE, Plaintiffs respectfully pray that: . . .
> b. The Court declare the distribution scheme detailed in paragraph 1 of this complaint to be unconstitutional and void;
>
> c. The Court, after full hearing, permanently enjoin distribution of monies in reliance upon those provisions entailed in paragraph 1 of this complaint."

Thus plaintiffs in McInnis in their complaint base their whole rationale on the theory stated in paragraph 1 of their complaint, that only expenditures based on the educational needs of the students are constitutional. The request for relief is tied directly to this paragraph and therefore this theory.

The District Court opinion in McInnis concurs with the above reading of the McInnis complaint. The Court said:

> "The underlying rationale of the complaint is that only a financing system which apportions public funds according to the educational needs of the students satisfies the Fourteenth Amendment." (___F.Supp.___)

Thus in the McInnis case the only issue before the court was whether the Fourteenth Amendment required the state to base its expenditures for education solely upon the educational needs of the students.

Without quarreling with the decision in McInnis, it is clear that the constitutional standard espoused in the McInnis complaint would in its inception require standards so subjective as to be wholly unjusticiable by the courts. No objective standards with which to judge the educational need of

an individual student were offered. This is a subjective thing involving an individual's total psychological makeup, a quantity incapable of objective measurement.

Plaintiffs' complaint in the instant case does not allege that school expenditures are required by the Constitution to be made according to the educational needs of the students. Rather, plaintiffs complaint requests that expenditures be based on the educational duty of the state and the county to meet their constitutional duty, (Paragraph 14.1 (i)), and provide an equal opportunity for an education to all in the state and county. Under this standard the court is not required to analyze the subjective needs of children; this standard is capable of objective measurement based on objective standards.

By the educational needs of the county, plaintiffs are referring to the facilities provided by the county to meet its duty for education buildings and equipment, teachers, books, and curriculum. It is the facilities offered by the county that determines the educational opportunity offered to the children of the county, and it is equal educational opportunity, in terms of equal facilities that is required by the Equal Protection Clause of the Fourteenth Amendment. Thus what Plaintiffs are asking for in the instant case is equalization of educational opportunity, through laws reasonably geared toward the equalization of facilities based on the need for facilities in the various counties.

The relief requested in the complaint by Plaintiffs in the instant case is tied directly to the requirement that the state provide an equal opportunity for an education for all through equal facilities. See subparagraphs B. and D. of the WHEREFORE clause and the direct reference therein to the state's duty to provide an equal educational opportunity for all children of the Commonwealth. This relief is very different from the requirement that all funds be distributed according to the educational needs of the students, as was requested in the McInnis case.

Defendants in their brief attempt to draw similarities between the complaint in McInnis and the complaint in the instant case. In the light of the above discussion, it can now be seen that the similarities defendants attempt to draw are erroneous. Defendants claim that paragraph 14.1 (i) of plaintiffs complaint in the instant case alleges that the method of financing must relate to the educational needs of the students. Plaintiffs actually allege that the method of financing must relate to the educational needs of the county. Moreover, the other supposed similarities in the complaints are of no consequence due to the great difference in the relief requested, a difference not mentioned by defendants.

This distinction is crucial. The complaint in the instant case does not allege that school funds must be allocated only according to the amorphous and nonjusticiable standard of the educational needs of the students. Plaintiffs allege that school funds must be allocated in such a way as to provide equal educational opportunity for all in the state, by basing the allocation of funds on the educational needs of the county, in terms of the facilities needed for a school system. Thus plaintiffs are asking for something very different in this case than was requested by the plaintiffs in McInnis.

4. Judicially manageable standards exist with which to judge the criterion of equal educational opportunity as set forth by plaintiffs.

The District Court in McInnis clearly states that it feels there are no judicially manageable standards only insofar as the criterion of the educational needs of the students is concerned. The Court says:

> "Even if the Fourteenth Amendment required that expenditures be made only on the basis of the pupils' educational needs, this controversy would be nonjusticiable."

In the instant case, where plaintiffs are asking for equalization of the opportunity to receive an adequate education required by the state's Constitution, through equalization of facilities in the various counties, judicially manageable standards do exist with which to judge legislative action in the area of school financing. The Supreme Court, in Brown v. Board of Education of Topeka, supra, recognized that equal facilities, in terms of buildings, curricula, teachers and equipment, was the minimum required by the Fourteenth Amendment in the field of education. The Supreme Court of Virginia, in Harrison v. Day, 200 Va. 439, 106 S.E. 2nd 636 (1959), in defining the words "efficient system" of schools, enumerated what facilities were required by the Virginia Constitution and had no trouble envisaging these facilities, buildings and equipment, teachers, etc. as measurable quantities.

The trial transcript indicates in detail some of the facilities which are important in judging equality of educational opportunity. Where the children have to eat lunch in a cafeteria with a dirt floor, the county is not offering equal educational opportunity to its children. (Tr. P. 38.) Where only 74.07 percent of the teachers of the county hold regular certificates and 11.1 percent of the teachers in the county are substandard, the county is not offering equal educational opportunity to its children. (Tr. P. 17-18.) Where the high schools in Bath County fail to offer more than two years of foreign language, not enough to meet the entrance requirements of five of the colleges run by the State of Virginia, the county is not offering equal educational opportunity to its children. (Tr. P. 79). Where the high school library is inadequate in terms of books owned and must also serve as a study hall, the county is not offering equal educational opportunity to its children. (Tr. P.77.) Where the high schools in the county offer less than half the curriculum units offered by other counties and fail to offer any relevant vocational courses, the county is not offering equal educational opportunity to its children. (Tr. P. 73-5). And where those conditions exist due solely to

the poverty of the county, the state is not providing an equal educational opportunity for its children. This is what plaintiffs mean by the educational needs of the county.

It should be pointed out that at this point Plaintiffs are not asking that every school in the state be required to be identical in equipment, books, etc. What Plaintiffs are asking is that the total facilities of each district, translated into monetary terms, be made equal through laws reasonably geared toward this purpose. Also, Plaintiffs do not claim that a wealthy district should be denied the right to raise extra money locally to spend on their own schools, as long as the funds provided by the state under the duty imposed by Sect. 129 of the Virginia Constitution are reasonably geared toward providing an equal educational opportunity for all.

In sum:

1. Defendants rely entirely upon the applicability of McInnis to the instant case.

2. The Court in McInnis said ". . .no cause of action is stated for two principal reasons: (1) the Fourteenth Amendment does not require that public school expenditures be made only on the basis of pupils' educational needs . . . ."

3. In support of this position, defendants attempt to compare paragraph 1. of the McInnis complaint with paragraph 14 of this complaint.

4. However, paragraph 1 of McInnis talks of "educational needs of the children" and paragraph 14 of this complaint talks of "educational needs of the several counties." (Emphasis added.)

5. Thus we are talking of objective justiciably manageable standards, whereas the standards in McInnis are not justiciably manageable since they are subjective.

6. For this and the other reasons stated above we urge that Plaintiffs be given judgment as requested.

5. Appropriate relief can be granted by the courts in this case.

Avenues exist through which the courts can grant relief to Plaintiffs in this case. Plaintiffs have asked that the distribution of the Basic School Fund of the State of Virginia according to the present formula be enjoined and that the State of Virginia be required to distribute the fund in a manner geared to provide an equal educational opportunity for all in the state.

Plaintiffs have also requested that the present system of funding education in Virginia be delcared unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment; that the State of Virginia be required to enact legislation reasonably geared toward providing an equal educational opportunity to all in the state.

Finally, Plaintiffs have requested that the courts retain jurisdiction in the matter to assure that the state legislature is following the mandate of the court.

The relief asked is not unusual. The courts have retained jurisdiction in the voting redistricting cases and in the school desegregation cases and have been constantly reviewing attempts by the legislature to comply with the court's orders. The court could easily do the same in the instant case.

One U.S. Circuit Court has actually ordered equalization of facilities between predominantly Negro and predominantly white schools. See U.S. v. Jefferson County Board of Education, 372 F.2nd 836 (5th Cir., 1966), cert. denied 389 U.S. 840, rehearing denied 389 U.S. 965. The court in that case offered a proposed court order for the District Court as follows:

> "In schools heretofore maintained for Negro students, the defendants shall take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white students....By October of each year, defendants shall report to the Clerk of the Court pupil-teacher ratios, pupil-classroom ratios and per-pupil expenditures, both as to operating and capital improvement costs, and shall outline the steps to be taken and the time within which they shall accomplish the equalization of such schools." 372 F.2d 836, 899-900.

The Supreme Courts went even further in Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964). In that case the Supreme Court authorized the District Court to order the county to raise sufficient tax revenues to open up the schools of the county, where the schools had been closed to avoid desegregation. Thus the courts, while retaining jurisdiction, could order the state to raise enough money to keep its schools operating while the lesiglature devised a new scheme of financing education.

From the above cases, the following could serve as a proposed court order in the instant case:

This court hereby declares that the laws relating to the distribution of funds for education in the State of Virginia are in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and for this reason are to be void and of no effect. The court also declares that the State of Virginia has failed to provide an equal educational opportunity for all children in the state in violation of the Fourteenth Amendment to the Constitution of the United States. Defendants are therefore enjoined from distribution of the Basic School Fund of Virginia under the present formula. It is further ordered:

1. The defendants shall serve copies of this order upon every county and city in Virginia comprising a separate school district within 20 days of the date of this order.

2. The State Department of Education shall submit a study of the educational system of the State of Virginia using materials presently available as brought up to date indicating deficiencies in buildings, equipment, teaching materials, curriculum, and substandard teachers for every county and city comprising a separate school district in the state. The study shall include specific recommendations (for the court and the Virginia Legislature) as to a program for correcting the deficiencies and assuring that equal educational opportunity is offered to all children of the state. This report shall minimally provide that

a) all districts be able to make available sufficient educational units as may be required for application for every institution of higher learning in Virginia;

b) that vocational training in major trades be made available;

c) a plan to bring all school buildings up to a proper minimal standard and propose for the construction of needed new buildings; and

d) a plan to make available to all districts adequate teaching staff and additional specialists.

This study shall be submitted within 6 months of the date of this order and shall be served upon this court, both houses of the Virginia Legislature, and every county and city comprising a separate school district in the State of Virginia within 10 days of completion of the study.

3. Any county or city so served with the study pursuant to paragraph 2 of this order may comment upon or file a reply with the court within 30 days of receipt of the study.

4. Until the legislature of the State of Virginia shall act to implement a program to correct the inequalities in educational opportunity in Virginia indicated in the study referred to in paragraph 2 of this order, the Basic School Fund of the state shall be distributed in such a manner that funds be given for all teachers in Bath County, and no dimunition of funds be made due to low pupil-teacher ratios or due to sub-standard teachers.

5. Any other county or city comprising a separate school district in Virginia wishing the interim relief set forth in paragraph 4 of this order may apply to the court for such relief within 30 days of the service of this order upon it. The application should include proof of sufficient facts to establish a need for such relief. The court will then grant or deny the request upon the proof offered.

6. If the legislature shall fail to implement a program to correct the inequalities in the educational opportunity offered in different districts in Virginia as indicated in the study referred to in paragraph 2 of this order by June 1, 1970, the court will direct that the educational system of Virginia be run in accordance with the recommendations of the study referred to in paragraph 2 of this order with changes recommended by the counties and cities under paragraph 3 of this order until such times as the legislature shall take appropriate action.

The above order provides for both interim and final relief based on the requirements of the Fourteenth Amendment and can be easily enforced by the court.

CONCLUSION

Plaintiffs respectfully submit that for the above reasons, the Court enjoin the distribution of the Basic School Fund of the State of Virginia amending to the present formula and declare the laws relating to the distribution of state monies for education void and of no effect. Plaintiffs also submit, for the above reasons, that the Court delcare that the State of Virginia has failed to provide an equal opportunity for education to all in violation of the Fourteenth Amendment to the Constitution of the United States. Plaintiffs finally submit that the court retain jurisdiction to allow the state legislature time to reapportion the state school fund and to perform the necessary acts to provide an equal educational opportunity to all in the state.

Dated:

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

ODELL YOUNG, individually, on behalf of her minor dependent grandchildren DEBRA KAY PEAKE, TANYA LEE PEAKE, KENNETH EDWARD PEAKE, and KEVIN EUGENE PEAKE, and on behalf of all others similarly situated,	
v.	
DENVER H. WHITE, individually and as Director of the Department of Public Welfare of the State of Ohio, and	CIVIL ACTION NO. _____
MICHAEL SEIDEMAN, individually and as Acting Director of the Franklin County, Department of Public Welfare.	

COMPLAINT

1. This is an action for declaratory and injunctive relief pursuant to Title 42, United States Code, Sections 1983 and 2000d to secure relief against the enforcement of those parts of Sections 453 and 460 of the Public Assistance Manual of the State of Ohio Department of Public Welfare which deny plaintiffs the equal protection of the laws guaranteed under the Fourteenth Amendment and unlawfully discriminate against plaintiffs, by denying plaintiffs public assistance in excess of the arbitrarily determined "state standard allowance," while allowing other persons similarly situated public assistance sufficient to meet their needs, as determined by the State, without such arbitrary limitation.

JURISDICTION

2. Original jurisdiction over this suit is conferred upon this court by 28 United States Code §2201 relating to

declaratory judgments, and 28 United States Code §1343(3) and (4) relating to actions arising under 42 United States Code §1983 and 2000 d.

THREE-JUDGE COURT

3. Plaintiffs respectfully request that a three-judge district court be convened. Such a court is required under 28 U.S.C. §2281 because plaintiffs seek to enjoin the enforcement of a regulation of the Ohio State Department of Public Welfare of state-wide application, promulgated under authority conferred by state statutes (Ohio Code 5107.02(E)) upon the ground that this regulation contravenes the Fourteenth Amendment to the United States Constitution.

PLAINTIFFS

4. MRS. ODELL YOUNG is a Negro citizen of the United States and a resident of Franklin County in the State of Ohio, where she has continuously resided since 1945. She is the grandmother and sole support of plaintiff children, DEBRA KAY PEAKE, TANYA LEE PEAKE, KENNETH EDWARD PEAKE, and KEVIN EUGENE PEAKE, all of whom reside with her at her home in Franklin County. Plaintiff's husband and her children left her home in 1962 and 1965 respectively and their whereabouts are unknown. Mrs. Young has legal custody of her aforementioned grandchildren. Plaintiffs have no income, resources or source of support other than the $212.00 per month to which they are entitled under the Ohio program of Aid to Families with Dependent Children. This amount is the sum of the "state standard allowance" of $127.00 and the maximum shelter allowance of $85.00.

5. Plaintiffs are members of a class composed of needy adults and their dependent children residing in the State of Ohio and eligible to receive aid under the Ohio program of Aid to Dependent Children. Members of this class have been denied assistance commensurate with their needs because of arbitrary and discriminatory invocation of the so-called "state standard allowance," described in Section 460 of the Public Assistance Manual. (The Manual contains the regulations promulgated by the State of Ohio Department of Public Welfare.) Plaintiffs also represent a sub-class composed of black persons who have been discriminated against with regard to the determination of their benefits on the basis of their race. The members of the class and sub-class on behalf of whom plaintiffs sue are so numerous as to make joinder impracticable. There are common questions of law and fact and plaintiffs' claims are typical of the claims of the class and sub-class; plaintiffs challenge the validity of a restriction applied uniformly to all members of the class and sub-class on grounds available to all members of the class and sub-class: to wit, the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution and the provisions of the Social Security Act, and Title VI of the Civil Rights Act of 1964. Plaintiffs will adequately protect the interests of this class and sub-class.

DEFENDANTS

6. DENVER L. WHITE is the Director of the Department of Public Welfare of the State of Ohio. Pursuant to §5101.02 of the Ohio Code, he is designated as the chief executive officer of the Department holding ultimate administrative power in the Department including the power to prescribe rules and regulations.

7. MICHAEL SEIDEMAN is Acting Director of the Franklin County Department of Welfare and is responsible for administering

the Ohio program of Aid to Dependent Children in the area of plaintiffs' residence. Ohio Code §§ 329.02 and 329.04 charges him with responsibility for supervising the administration of that program in Franklin County.

STATEMENT OF CLAIM

8. Like all other states, Ohio cooperates with the Federal Government in extending public assistance to needy persons, as authorized in the Social Security Act of 1935. Pursuant to that legislation, state and federal governments extend aid to the aged (AFA), the blind (AB), the permanently and total disabled (AFD), and families with dependent children (ADC). In fulfillment of its obligations under federal legislation, the State of Ohio has drawn up a plan for the provision of assistance to eligible needy persons.

9. Ohio has determined that it shall pay the cost of rent and utilities only up to certain fixed amounts as set forth in Manual Sections 465.21 and 465.22. The maximum for a family of four or five is $90 a month.

10. On information and belief, the amount a person or family needs in addition to rent was established by the State of Ohio on the basis of budgets prepared in 1959 by Miss Meredith Jones and two other consultant experts. This standard, designated in Section 460.1 of the Manual as the "100% standard," is set forth in that section for each of the four categories mentioned above (AFA, AB, AFD and ADC). On information and belief, in preparing the "100% standard," Miss Jones and her colleagues attempted to arrive at minimum budgets consistent with health and common decency. This purpose governed the formulation of the standard in each of the four categories.

11. That the "100% standard" provides a bare subsistence level of support is evident when the $2764 deemed needed by a family of four is compared to the $3335 which the Department of Health, Education and Welfare deems a minimum budget compatible

with health and decency. Furthermore, no adjustment has been made for increases in the cost of living since 1965 despite the sharp intervening increase in prices. For the purposes of this case, however, plaintiffs do not question the validity of this determination of need.

12. Eligible applicants for AFA and AB receive assistance in an amount equal to 100% of the need calculated as set forth in paragraph 10. Plaintiff YOUNG and her grandchildren, like most other ADC applicants, receive payments which are arbitrarily and unjustifiably limited to 73% of the State's estimate of their needs. The only ADC applicants receiving more are those with only one person in the family receiving assistance; in such cases 91% of need is paid. This maximum amount that can be paid is defined in the Manual as the "State standard allowance." The restriction in payments to ADC recipients is sometimes referred to hereafter as the "73% limitation." The relevant state regulations with regard to determination of need and payment of State standard allowances, Manual Sections 453 and 460, are annexed hereto as Appendix A.

13. Plaintiff YOUNG and her four grandchildren receive $212.00 a month in ADC benefits. The "State standard allowance" for five persons is $127.00. This is the total payment for food, clothing and all other expenses except for rent and utilities. The State has determined that Mrs. Young and the children need $176, but because of the 73% limitation they receive $49 less each month than they need to live in minimum health and decency. Of this $127, $28 is payable for the adult caretaker, $35 for the first child in the assisted family, $18 for the second, and $25 for the third, and $25 for the fourth, despite the fact that State's estimates of need for the five individuals are respectively $48, $25, $24, $35 and $34.

14. Mrs. YOUNG'S rent and utilities cost $89 a month. She receives the maximum allowance of $85 for those items, and must therefore pay for shelter from money which the State acknowledges to be only 73% of the amount needed for food, clothing and other

non-shelter items.

15. Of those persons currently receiving ADC, 55% are Negro, whereas only 17% of those on the AFA rolls are Negro. This fact is well known to those knowledgeable in matters of public assistance such as defendants. Defendant WHITE, in the exercise of his authority set forth above, has established and maintained the 73% limitation in the ADC program while requiring 100% payments in the AFA program.

FIRST CAUSE OF ACTION

16. By arbitrarily limiting the amount payable to an ADC family to 73% of state-determined subsistence while providing 100% to similarly situated persons in other aid categories, the state has denied to plaintiffs the equal protection of the laws to which they are entitled under the Fourteenth Amendment to the Constitution of the United States. Constitutional guarantees of equal protection and due process are fully applicable to state expenditure policies in general, and to the ADC program in particular. The imposition of the arbitrary 73% limitation on aid payable to ADC families creates an invidious distinction between ADC families and other applicants for public assistance which bears no reasonable relation to the purposes of the assistance program, namely, the furnishing of assistance to the needy, the strengthening of family life, and the encouragement of personal independence (42 U.S.C. §601).

SECOND CAUSE OF ACTION

17. The arbitrary discrimination against all ADC recipients resulting from the 73% limitation is contrary to the intent of the Social Security Act, 42 U.S.C. §§601 ff., and the regulations thereunder, that all recipients shall be treated equitably.

THIRD CAUSE OF ACTION

18. The State standard allowance for a family with only one person receiving ADC is 91% of the 100% standard of need. The

State standard allowance for families with two or more persons receiving ADC is at most 73% of the 100% standard of need. Plaintiffs and all other persons similarly situated are denied the equal protection of the laws guaranteed by the Fourteenth Amendment and the equitable treatment required by the Social Security Act, 42 U.S.C. §§601 ff., because there is no rational justification for limiting some children to 73% of subsistence while providing others 91%.

FOURTH CAUSE OF ACTION

19. Limiting assistance to 73% of subsistence for ADC applicants while not so limiting payments to AFA and AB applicants also constitutes an invidious discrimination violative of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because the burden of this limitation falls predominantly on Negro persons.

FIFTH CAUSE OF ACTION

20. The racial discrimination alleged above is proscribed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, pertaining to racial discrimination in the administration of federally funded programs, and the Social Security Act,

42 U.S.C. §§601 ff., and regulations thereunder, requiring equitable treatment of all recipients.

NEED FOR RELIEF

21. Defendants' enforcement of the arbitrary State standard allowance limitation has caused plaintiffs extreme hardship, suffering, and anxiety, including inadequate food, clothing, and shelter. Plaintiffs have suffered and will continue to suffer severe and irreparable injury to their health and well-being as a result of the enforcement of the State standard allowance until this provision is declared unconstitutional and illegal and its enforcement enjoined by this Court.

22. This 42 U.S.C. §1983 action may be maintained without prior exhaustion of state administrative remedies. No relief can be obtained through state administrative procedures since the discrimination is required by state statutes and regulations. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs, on behalf of themselves and all other similarly situated, respectfully pray that this court:

1. Assume jurisdiction of this cause and convene a three-judge district court to determine this controversy, pursuant to 28 U.S.C. §§2281 and 2284.

2. Issue a temporary restraining order and preliminary injunction pursuant to 28 U.S.C. §2284 ordering the defendants to provide public assistance to the plaintiffs and the class which they represent in an amount which will meet their subsistence

requirements, as determined by the State, without limitation by the arbitrary "State standard allowance" set forth in Public Assistance Manual Sections 453 and 460.

3. Enter a final judgment pursuant to 28 U.S.C. §§2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that the imposition of the "State standard allowance" limitation denies plaintiffs and the class which they represent equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution, equitable treatment required by the Social Security Act, 42 U.S.C. §§ 601 ff., and regulations thereunder, and freedom from racial discrimination protected by Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d in that they arbitrarily discriminate between plaintiffs and others similarly situated.

4. Issue a permanent injunction restraining defendants, their successors in office, agents and employees from applying the "State standard allowance" limitation to deny plaintiffs assistance commensurate with their needs as determined by the State.

5. Award the plaintiffs, their dependent children or grandchildren, and the class they represent, damages for money to which they were entitled but for application of the unlawful "State standard allowance" limitation.

6. Award plaintiffs their costs and disbursements incurred herein.

7. Award the plaintiffs and all others similarly situated such further and alternative relief as may seem just and equitable.

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Fund for Racial Equality
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Lee A. Albert
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September 26, 1968

Carl Rachlin, Esq.
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New York, New York

Re: Ohio Cross-Category Equalization Case

Dear Carl:

Linda Champlin has advised me that the groups in Columbus are now gathering plaintiffs as you suggested.

I've now gone through your complaint which is excellent. A copy of our draft complaint is enclosed; clearly we are working in the same direction. I would like to take a minute to discuss our philosophy in this critical area of litigation and our rationale for proceeding as we are. These remarks are not directed at your complaint, but at the issue of the appropriate matters to raise in a litigation of the sort you and we are about to commence.

It is our understanding that adequacy of the grant is pretty much the key "political" issue the welfare rights groups wish to pursue and that we lawyers have litigated in this area very little. This is, of course, because the legal theories are very difficult ones and have yet to be accepted by the courts. For example, over half a dozen maximum grant cases have been filed in the last year and a half, and not one has been decided (except one that mooted out). The judicial reluctance to deal with maximum grants has been substantial -- one District Court has had the case under submission for eight months, and another refused to convene a three-judge court. We have been rather sobered and chastened by this experience, for we consider the maximum grant cases to raise the equal protection-arbitrary classification issue in the neatest possible way.

The Center hopes to see some victories in narrow, clear-cut cases like the maximum grant and percentage reduction cases so that the WRO's can then successfully move into broader economic questions. An attempt to deal at the outset with economic issues posed in their broadest form is likely to make the most liberal judge reluctant to grant relief. We, as lawyers, know that the legal process can be used to our advantage only by the development of precedent. You will recall our discussion at your apartment about development of new common law doctrine to serve the poor rather than the established interests. That is exactly what is at stake in the attempts of poverty lawyers throughout the country to attack inadequacy through the Equal Protection Clause. The political goals of the welfare rights groups would be ill-served by our closing off the possibility of substantial victory on any economic issue by bringing a case on too broad a scale and losing.

We would like to win a couple of economic cases. To win a decision that Ohio may not pay ADC families a percentage of need when it pays others 100% will in itself be a major victory of substantial economic and political impact and will also have tremendous value as a precedent throughout the country. We think we can win if we keep the case within bounds.

Raising many issues in a case concerned with adequacy will at best delay and confuse matters and will likely cause defeat. Plaintiffs have to be found that have suffered the various wrongs. The other issues, also worthy of decision, may get lost.

Even in the area of adequacy, certain matters are not necessary to a victory and may confuse and delay matters. We should not at this time attack the concept of a grant-in-aid from federal to state, or from state to local, governments. Therefore, we oppose both inclusion of issues involving variation from county to county arising from matching funds provided by counties, and allegations of different treatment by other states. We now protest an inequality, an arbitrary discrimination, in benefits given in one locality, e.g., Columbus, Ohio.

Those other important issues will not be decided in our favor if we cannot win the point concerning payment of a smaller percentage of need in ADC as opposed to the other programs. Inclusion of those claims in the case at this point might convince a judge that the ramifications are too broad for the issue to be appropriate for judicial resolution.

Turning now to the proposed complaints, I would hope that you will find our draft, as I have now modified it in the light of your complaint, a satisfactory vehicle for this important case.

You may be right that Wilbur Cohen should be joined as a defendant, even though he is not a necessary party since the percentage reduction can be struck down without him. Before filing, we would like to check around and see what position H.E.W. and the Civil Rights Division of Justice will take, since we hardly want the federal government coming in dead set against us.

We have cited the Manual for the percentage reduction; you cited a statute. I have looked into the matter, and we are both correct. The statute referred to does not establish the percentage reduction but does recognize its existence. This strengthens the claim for the three-judge court, and we have re-worked our complaint to include the statute.

We also quite agree with your inclusion of Title VI of the Civil Rights Act of 1964 as a basis for jurisdiction and have added a cause of action to our complaint on that ground.

We have added a cause of action based on H.E.W.'s equitable treatment doctrine, treated in the Yale Law Journal note. It is, of course, implicit in your complaint insofar as you allege violations of the Social Security Act.

Our complaint is rather full, containing many factual allegations and various explanations. We feel this advisable in this area which is foreign and complex to most judges.

I look forward to your comments and proposals. Perhaps you and/or Sally Gold and I should meet to go over this. If

we get more plaintiffs on whom we agree, I will incorporate them into the complaint and we can get into court at last.

This should be a very exciting case -- a victory will create a significant advance not only in Ohio but throughout the country. It will be fun to work together with you and your office on this.

Best regards.

Cordially,

Henry

Henry A. Freedman

P.S. I received a copy of Linda's letter to you after this letter was written, but before I was able to get it out.

P.P.S. I have reservations for the flight to Columbus.

cc: Linda Champlin

HAF:sk

Enclosure

LDC Card

Mail to Marvin Rich S.E.D.F.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

SAMUEL ADAMS	)	
Plaintiff	)	CIVIL ACTION
versus	)	NO. 67-467
FAZZIO REAL ESTATE CO., INC., ETAL	)	SECTION C
Defendants	)	
	)	

Robert F. Collins, Esq.
John O. Fox, Esq.
Attorneys for Plaintiffs

Richard B. Sobol, Esq.
Of counsel

Val A. Schaff, III, Esq.
John Curry, Esq.
Warren Mouledeaux, Esq.
Attorneys for Defendants

RUBIN, District Judge.

The plaintiff contends that the defendants have denied him the right to bowl in their bowling alley and that this deprives him of rights granted him by the Civil Rights Act of 1964.[1] The central issue is whether a bowling alley in which a snack bar is located is a public accommodation within the meaning of the Act. The resolution of this issue turns solely on the interpretation of the statute.

Section 201 of the Civil Rights Act of 1964 declares that all persons are entitled to the full and equal enjoyment of any place of public accommodation as defined in that section.[2] It nowhere reaches bowling alleys as such, and that portion of the statute that affects places of entertainment does not extend to bowling alleys.[3] However, the Act does define as a covered place of public accommodation:

> "any establishment...within the premises of which is physically located any...covered establishment, and...which holds itself out as serving patrons of such covered establishment."[4]

Thus, if a covered establishment is located within an establishment not otherwise covered by the law, it may by its

MAY 10 1967

Marv:
Carl may be interested in this. The penciled notations were for a news release, not for you.

very presence make the larger establishment subject to the Act. The defendants operate a facility that they call a snack bar, and the plaintiff contends that this is a covered establishment, for the Act applies to "...any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises...." 5/

FACTUAL BACKGROUND

The defendants, Fazzio Real Estate Co., Inc., Fazzio's Recreation Center, Inc., and Domenico & Fazzio, own and operate Fazzio's Bridge Bowl ("Fazzio's"), which is located on the West Bank of the Mississippi River in Algiers, directly across the river from New Orleans.

Fazzio's is located off the West Bank Expressway (U.S. Highway 90), directly across the highway from the Algiers Fisher Project (a federal low-rent housing project) where the plaintiff lives. It is clearly visible to anyone traveling on the Expressway. However, a chain link fence six feet high separates Fazzio's from the Expressway making it accessible only from Behrman Highway.

Together with a number of other negroes who reside in New Orleans, plaintiff went to Fazzio's on March 30, 1967, to bowl. Defendant refused to let plaintiff or the other persons who were with him bowl because they were negroes.

Fazzio's is housed in a building containing 29,900 square feet. An area containing about 18,600 square feet is devoted to bowling alleys. An area of approximately 9,500 square feet is devoted to equipment counters and other facilities necessary for bowling. An area of approximately 1,200 square feet is used as a lounge for the sale of alcoholic beverages. The premises also contain a counter where beverages and food are sold. The plaintiff calls this a "lunch counter," obviously because the Civil Rights Act applies in haec verba to "any lunch counter." Signs in the bowling alley refer to it as a "snack bar," and the defendants prefer this designation, obviously because it is not one used by the Civil Rights

Act. For purposes of this opinion, this area will be called by the suitably neutral name of refreshment counter.

The area is approximately 37 feet long and 13 feet wide. It has stools for the seating of 15 people. The principal items sold are beer, soft drinks (including Coca Cola), hamburgers, hot dogs, coffee, and other similar items. Customers are not asked whether or not they live in Louisiana. Non-residents are not denied service. Fazzio's does not advertise its refreshment counter service except by signs inside the bowling alley.

The refreshment counter is located directly behind the bowler's end of the bowling lanes. They are fully accessible to each other, and they are not separated by a partition or screen of any kind.

Fazzio's offers bowlers what it considers a unique service. Each lane is connected with the refreshment counter by an intercom, and a bowler can place an order for beverages or food without leaving his place at the alley. Such orders are delivered to bowlers by a porter. At the bowlers' end of each alley, there is a space for the seating of spectators. Spectators as well as bowlers are allowed to take food and beverages from the refreshment counter to the seating area. Chairs in the seating area have special racks to hold beverage containers.

Fazzio's urged that more than 50% of the sales made at the refreshment counter are sales of beer, therefore the facility is principally engaged in selling beer, and beer is not a food. This conclusion is sought to be supported by the decision in Cuevas v. Sdrales, 10 Cir., 1965, 344 F.2d 1019, cert. denied 1966, 382 U.S. 1044, 86 S.Ct. 625, 15 L.Ed.2d 528, in which it was held that bars and taverns where the sale of drinks is the principal business are not covered establishments. 6/ Secondly, Fazzio's urges that, even if the facility would itself be a covered establishment were it alone, it occupies only 2% of the space in the building, it provides less than 8% of the center's gross revenue, and its operation is therefore purely incidental to the operation of the bowling alley, and hence it is not covered by the Act.

The bowling alley building also contains a "lounge area" which is leased to a third person. This lounge is devoted primarily to the sale of alcoholic beverages. The plaintiff urges, however, that if the bowling alley is a covered establishment, the lounge would also become covered; lunch counter brings in bowling alley; bowling alley brings in lounge. However, the operators of the lounge are not made defendants to this action.

THE "SNACK BAR" AS A LUNCH COUNTER OR A FACILITY PRINCIPALLY ENGAGED IN THE SALE OF FOOD

Section 201(b)(4) [relative to an establishment which becomes a public accommodation because it includes a covered establishment] makes it clear that the mere physical presence of a covered establishment within the premises of a non-covered establishment makes the non-covered establishment a public accommodation.

The first question to be answered is whether the refreshment counter is a "restaurant," a "lunch counter" or "other facility principally engaged in selling food for consumption on the premises." The terms "restaurant," "lunch counter," and "other facility principally engaged in selling food for consumption on the premises" are not terms of art. They are words in common usage, and they are employed in the statute in their ordinary meaning. 7/

Webster's New International Dictionary does not define the term "lunch counter," but the phrase is defined in A Dictionary of Americanisms as "a counter or a restaurant at which people, usually seated on stools, are served meals or refreshments." A restaurant is defined in Webster's as "an establishment where refreshments or meals may be procured by the public." And the same authority defines a "snack bar" as "a public eating place where snacks are served usually at a counter." The sole distinction between a "snack bar" and a "lunch counter" lies in a minor difference in the type of food served. "Lunch" is a "light meal usually in the middle of the day," or "a light meal taken at any time of the day or night at a selected place," according to Webster's, while a "snack"

is defined by the same dictionary as "food served or taken informally usually in small amounts and typically under other circumstances than as a regular meal."

So far as this case is concerned, it is hard to see any substantial distinction in the dictionary definitions of "snack bar" and "lunch counter." It is even harder to conceive that Congress intended to draw a distinction between these two types of refreshment counters. Both snack bars and lunch counters engage in selling refreshments as well as food. They both sell sandwiches, light meals, and beverages.

In essence, Fazzio's argument comes to this: The refreshment counter is not a lunch counter because it sells more beer than food. Beer is not food. When food and beer are sold together, but a greater dollar volume of beer is sold than food, the seller is not principally engaged in the sale of food.[8/] However, the argument won't stand up. The evidence shows that more than 50% of the sales from the refreshment counter are sales of food and non-alcoholic beverages. And refreshment counter sales are substantial in relationship to total bowling alley revenues. In the first six months of the counter's operation, Fazzio's total sales were $128,075. Refreshment counter sales amounted to $29,945.[9/]

Fazzio's itself doesn't call the facility a "bar" or a "tavern"; it refers to the facility as a "snack bar." In physical appearance, it looks like a lunch counter. Service is at a counter provided with stools. The counter is of the kind generally used in facilities called "lunch counters" rather than the kind customarily used in bars. The posted menu lists a variety of sandwiches and beverages; beer is only one of many items listed. The public would see nothing amiss in a sign calling it a lunch counter. The judge who said it could not be so characterized would be shutting his eyes to the normal meaning of the words used in the Act.

The statutory language leads clearly to this result. Congressional committee reports confirm it. What is said in

Congressional committee reports and in debates should not change the meaning of clear statutory language.[10/] But these do afford insight into Congressional intent. They demonstrate whether the statutory language was inadvertent or clearly directed to the intended purpose.

Honorable Robert W. Kastenmeier who joined in the majority report of the House Judiciary Committee on H.R. 7152, which became the Civil Rights Act of 1964, filed a separate report in which he said that in his opinion the bill was of dubious morality because it covered bowling alleys that serve sandwiches and permitted bowling alleys that did not serve sandwiches to remain segregated.[11/] That is the necessary consequence of the statutory structure.

However, even if we conclude that the facility is not a lunch counter and isolate for decision the question whether it is a facility engaged principally in the sale of food for consumption on the premises, we would again reach the conclusion that this is a covered establishment. Lord Tenterden's Rule, or the rule of ejusdem generis, assists us in interpreting this phrase,[12/] for it tells us that the term implies a facility like a restaurant or lunch counter. The comparable section in Senate Bill 1732 extended to "any other public place engaged in selling food for consumption on the premises." The House Bill, H.R. 7152, the text of which became the Civil Rights Act of 1964 used the language "any other facility principally engaged in selling food for consumption on the premises." The reports do not give the reasons for the changes, but the word "facility" is obviously intended to be broader than the words "public place." The adverb "principally" as a modifier to the verb, "engaged," does not appear designed to limit its scope. The word "principally" implies that the sale of food must be the "main" or "chief activity" [Webster's Third International Dictionary] and the sale of food clearly is the main or chief activity of the refreshment counter.

UNITIZED OPERATIONS

Taking a cue from language in Kyles v. Paul, E.D. Ark., 1967, 263 F.Supp. 412, Fazzio's argues that its bowling alley is a "single operation with the sales of food and drink being merely adjuncts to the principal business" of providing bowling facilities to the public.[13] If it is indeed material to statutory coverage whether the physically contained covered establishment is or is not an important part of the overall operation, it suffices to point out that the defendants in the Kyles case proved that the sale of food and drink was purely an ancillary operation by closing this facility entirely. Fazzio's here concedes in effect that it would be undesirable from the business standpoint for it to do this.

But the language quoted from the Kyles case cannot be read alone. It is followed by the observation, "Section 201(b)(4) plainly contemplates at least two establishments, one of them covered by the Act, operating from the same general premises. See e.g. Pinkney v. Melloy, N.D. Fla., 241 F.Supp. 943. That situation does not exist here." This referred of course to the outdoor recreational areas involved in that case.[14] The situation contemplated by the Act does exist here. The Pinkney case cited by the Court in Kyles with approval held a barber shop located in a hotel to be a covered accommodation because it was in a hotel even though barber shops generally are not covered by the Act.

FLOOR SPACE RATIO

The statute contains no percentage test, and it is not necessary to show that the covered establishment which magnetizes the non-covered establishment in which it is physically located occupies a majority, or even a substantial part of the premises, or that its sales are the major or even a substantial part of the revenues of the establishment.[15] When Congress wished to require substantiality with respect to a standard employed in the Act, it said so: thus Section 201(c) states that, "The operations of an establishment affect commerce...if...a substantial portion of the food it serves...has moved in commerce."[16]

HOLDS ITSELF OUT AS SERVING PATRONS OF THE COVERED ESTABLISHMENT

Fazzio's does not question that the bowling alley holds itself out as serving patrons of the refreshment counter. Of course it is not the primary function of the bowling alley to serve the patrons of the counter; instead the counter is there to serve bowlers. But the bowling alley does serve food customers. There is no physical separation between the counter and the bowling lanes. The intercom permits bowlers to order food or drink from the counter delivered to their alley. Metal holders designed for beverage cans or cups are installed on the bowling chairs. Food and beverage customers are encouraged to take their orders away from the counter for consumption, and tables are provided for this purpose in addition to the use of the seats around the bowling areas.

AFFECT ON INTERSTATE COMMERCE

It is conceded that the refreshment counter is located within the premises of the bowling alley. But restaurants and other food service facilities are covered establishments only if they affect commerce. Section 201(c) of the Act provides that an establishment affects commerce if:

> (a) it serves interstate travelers, or
>
> (b) it offers to serve interstate travelers, or
>
> (c) a substantial part of the food which it serves has moved in interstate commerce.[17]

It is not disputed that a substantial part of the food served at Fazzio's refreshment counter has moved in interstate commerce.[18] While Fazzio's does not seek to attract interstate travelers to its counter, and displays no road signs for this purpose, there is no contention that Fazzio's seeks to bar interstate travelers or makes any effort to inquire whether or not its customers are residents.[19] The tests set forth with respect to affect on interstate commerce are not exclusive,[20] and a facility is covered if it meets any of the three criteria. Fazzio's refreshment counter does serve interstate travelers and a substantial part of the

food it serves has moved in commerce. It therefore is a covered establishment.

TRIAL BY JURY

Injunction is an equitable remedy and there is no right to a jury trial of this case as the defendants contend.[21] Indeed one of the arguments urged against the passage of the Civil Rights Act of 1964 was that it permitted trial without a jury.[22]

ATTORNEY'S FEES

The plaintiff seeks an award of attorney's fees under the provisions of 42 U.S.C.A. §2000(a)-3(b). Such an award is discretionary with the Court. Under all circumstances present in this case, it is my considered judgment that the Court should not grant attorney's fees.

DECREE

For the reasons given, the Court concludes that Fazzio's is a public accommodation. Since the hearing on the prayer for a preliminary injunction and the hearing on the prayer for a permanent injunction were consolidated, by order of the Court, an injunction will be issued restraining and enjoining the defendants from withholding, denying or attempting to withhold or deny to the plaintiff and members of the class he represents the rights to which he is entitled under Section 201(a) of the Civil Rights Act of 1964. Counsel for the plaintiff will prepare a draft of a proposed injunction and submit it to the Court, after first mailing a copy to the defendants. The defendants will submit any comments on and objections to the text of the proposed injunction within three days after receiving it. Thereafter, the decree will be framed and entered by the Court.

(signed) ALVIN B. RUBIN

/s/ Alvin B. Rubin
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana.

May 9, 1967.

1/ This is an action instituted under Title II of the Civil Rights Act of 1964, 42 U.S.C.A. 2000a. The plaintiff asks the Court to enjoin the defendants from denying him or members of his class and race the rights and privileges guaranteed by the public accommodation section of the Act. He brings this class action on behalf of himself and other persons similarly situated and affected. There are common questions of law and fact affecting their rights to use the services and facilities owned and operated by the defendants.

2/ Section 201(a) of Title II of the Civil Rights Act of 1964, 42 U.S.C.A. 2000a(a), reads as follows:

> "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

3/ Section 201(b)(3), 42 U.S.C.A. 2000a(b)(3), includes as a place of public accommodation:

> "any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment...." (Emphasis supplied.)

Senator Magnuson in presenting Title II of the Act to the Senate stated:

> "The following establishments would therefore be exempt: Barber shops and beauty parlors. Lawyers, doctors, and other professional people. Dance studios. Bowling alleys and billiard parlors." Cong. Record-Senate, 88th Cong. 2d Sess., Vol. 110, part 6, p. 7407.

See also BNA, The Civil Rights Act of 1964, page 83:

> "During the debates in the House, however, bowling alleys were mentioned specifically several times as examples of establishments outside the scope of the Act unless they operate lunch counters."

See Miller v. Amusement Enterprises, Inc., E.D. La., 1966, 259 F.Supp. 523, holding that the Act did not extend to an amusement park. The opinion noted that, while there were concession stands operated by the defendant where refreshments were served, the plaintiffs were making no claim for coverage under 201(b)(4) but their sole contention was that this was a "place of entertainment."

4/ These are the pertinent words of Section 201(b)(4) which reads in full as follows:

> "any establishment(A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment."

5/ Section 201(b)(2), 42 U.S.C.A. 2000a(b)(2). A bowling alley is therefore a public accommodation if it is established that:

(a) There is a restaurant, cafeteria, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises; and

(b) This food selling facility is located within the premises of the bowling alley; and

(c) The bowling alley holds itself out as serving patrons of the food selling facility.

6/ See in accord Tyson v. Cazes, E.D. La., 1965, 238 F.Supp. 937, reversed on other grounds, 5 Cir., 1966, 363 F.2d 742, holding that a bar and night club that serves only drinks is not a restaurant and is not subject to the Act. In the reversing opinion the court commented that, "At the hearing of this appeal the plaintiff conceded that the Celebrity Lounge, as a bar and lounge, does not qualify in one of the enumerated accommodations under Section 201 of the 1964 Act."

7/ "...[w]e must, of course, start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used." Richards v. United States, 1962, 369 U.S. 1, 9, 82 S.Ct. 585, 591, 7 L.Ed.2d 492, 498. Where Congress did not define a term employed in a statute, it could be assumed that it was intended that the word should have its ordinary meaning and that it was not employed as term of art. Heli-Coil Corp. v. Webster, 3 Cir., 1965, 352 F.2d 156. "It must be presumed that in using terms undefined in the statute, Congress intended the words to have their natural, ordinary and familiar meaning." United States v. 525 Co., 5 Cir., 1965, 342 F.2d 759, 761.

8/ The plaintiff argues that beer is food, citing dictionary definitions, a pamphlet entitled "Beer as an Adjunct in Low-Sodium Diets," the Food, Drug and Cosmetic Act, 21 U.S.C.A. 321f; and cases applying that statute in which beer was treated as adulterated food within its terms; and various state court decisions in other contests. It is not necessary to decide here whether or not beer is food within the meaning of the Civil Rights Act of 1964, but the Cuevas case is persuasive on that point. In addition, what is "food" within the meaning of one law is not necessarily "food" within the meaning of another. Even as one man's meat is another man's poison, one man's intoxicant may be another man's food. And vice versa.

9/ The sales from the facility were as follows:

	From 4/16/66 To 9/30/66	From 10/1/66 To 3/31/67
Total sales of food, beer, and non-alcoholic beverages	$29,945	$30,614
Total sales of beer	$13,982	$12,944
Total sales of food and non-alcoholic beverages	$15,963	$17,670
Beer sales as a % of total sales	47%	43%
Food and non-alcoholic beverage sales as a % of total sales	53%	57%
Gross income from refreshment counter sales	$14,775	Not disclosed by defendant's exhibits

	From 4/16/66 To 9/30/66	From 10/1/66 To 3/31/67
Gross income from beer sales	$ 6,611	Not disclosed by defendant's exhibits
Gross income from beer as a % of total refreshment counter gross income	45%	Not disclosed by defendant's exhibits
Gross income from food and non-alcoholic beverage sales as a % of total refreshment counter sales	55%	Not disclosed by defendant's exhibits
Total Gross Profit	$88,791	Not disclosed by defendant's exhibits

10/ Fisher Flouring Mills Company v. United States, 9 Cir., 1958, 270 F.2d 27; Rederiaktierbolaget v. Compania De Navegacion Anne, S.A., D.C. Canal Zone, 1955, 139 F.Supp. 327.

11/ Congressman Kastenmeier was criticizing the Act because it didn't go far enough. Notwithstanding his criticism no change was made. His report reads in part as follows:

> "In Title II, the bill reported by the full committee is deficient in that it guarantees equal access to only some public accommodations, as if racial equality were somehow divisible. Discrimination is prohibited in the reported version of H.R. 7152 in all hotels and lodging houses (with a minor exception), eating places, and places of public entertainment and spectator sports. At the same time, the bill would allow discrimination to continue in barber shops, beauty parlors, many other service establishments, retail stores, bowling alleys, and other places of recreation and participation sports, unless such places serve food. It is hard to follow a morality which allows one bowling alley to remain segregated, while another bowling alley down the street which serves sandwiches must allow Negroes to bowl." 2 U.S. Cong. and Adm. News (1964), p. 2410.

See also BNA, Civil Rights Act of 1964, page 84: "During the legislative debates on this aspect of the Act, it seemed to be generally assumed that the second category would embrace such lunch-counter-operating establishments as bowling alleys, skating rinks, and amusement parks."

12/ "Literally, that phrase means 'of the same kind or species.' It is a well known maxim of construction, sometimes called Lord Tenterden's Rule, to aid in ascertaining the meaning of a statute or other written instrument, and, under the maxim, where an enumeration of specific things is followed by a more general word or phrase, such general word or phrase is held to refer to things of the same kind, or things that fall within the classification of the specific terms." Bumpus v. United States, 10 Cir., 1963, 325 F.2d 264, 267. See also United States v. Alpers, 1950, 338 U.S. 680, 70 S.Ct. 352, 94 L.Ed. 457; Gooch v. United States, 1936, 297 U.S. 124, 56 S.Ct. 395, 80 L.Ed. 522.

13/ In Kyles v. Paul, E.D. Ark., 1967, 263 F.Supp. 412, 417, the Court commented that "...the snack bar operations were purely incidental to the recreational facilities, and the income derived from the sales of food and drinks was small in comparison to the income derived from fees for the use of recreational facilities."

Sales of coffee and other products that originated outside Georgia were found to support coverage in Gregory v. Meyer, 5 Cir., 1967, ____ F.2d ____, No. 23948.

19/ The statutory standard that operations of an establishment affect commerce "if it serves or offers to serve interstate travelers," appears to have been considered satisfied by minimal evidence. In Gregory v. Meyer, 5 Cir., 1967, ____ F.2d ____, No. 23948, the Court said: "The testimony was that customers were not questioned as to tourist status, and that tourists were not rejected as customers. One white interstate customer was served without inquiry as to his status...." In Newman v. Piggie Park Enterprises, Inc., D.C. S.C., 1966, 256 F.Supp. 941, 951, the Court stated: "...[T]he direct evidence produced by plaintiffs that defendant served or offered to serve interstate travelers is slight, unimpressive and inconclusive; however, from all the circumstances before the court there is no doubt but that defendant has served and is serving interstate travelers. This is apparent from the testimony of a witness that upon presenting himself for service...no inquiry whatever was made as to her place of residence....[D]efendants' drive-ins are located on much traveled interstate and federal highways with large signs at and about each location advertising its products....Moreover [defendant] employs no reasonably effective means of determining whether its customers are inter-or-intrastate travelers." In this case the defendant had posted a sign saying that it serves only intrastate travelers.

In Heart of Atlanta Motel, Inc. v. United States, 1964, 379 U.S. 241, 258, 85 S.Ct. 348, 358, 13 L.Ed.2d 258, 269, the Supreme Court sustained the constitutionality of the act, saying, "It is said that the operation of the motel here is of a purely local character. But, assuming this to be true, '[i]f it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze.' United States v. Women's Sportswear Mfrs. Assn., 336 U.S. 460, 464, 69S.Ct. 714, 716, 93 L.Ed. 805, 811, (1949)...."

20/ See Note 17 supra.

21/ The Seventh Amendment guarantees a trial by jury only "in suits at common law." It is well settled that suits for an injunction are not suits at common law and are tried without a jury. Simler v. Conner, 1963, 372 U.S. 221, 83 S.Ct. 609, 9 L.Ed.2d 691; United States v. Louisiana, 1950, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216; NLRB v. Jones & Laughlin, 1937, 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893.

22/ In BNA, Civil Rights Act of 1964, page 180, the "Additional Views of Honorable George Meader," to the House Judiciary Committee Report on H.R. 7152, he criticized the proposed bill for following a growing tendency to govern by injunction. "These actions are commonly known as suits in equity, or in chancery, to be heard by the judge without a jury (except in rare cases)."

See also the separate minority views of Honorable Richard H. Poff and Honorable William Cramer, House Judiciary Committee Report, cited in BNA, Civil Rights Act of 1964, page 229, criticizing the House Bill for furthering the process of government by injunction. There is no express statement in this minority report that the injunctive proceeding would be tried without a jury.

COMMITTEE ON HUM. RIGHTS re JAMES ANDERSON VS. COONEY, CHARLES E JR.
(HOUSING DISCRIMINATION)

...ty Of Wisconsin

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CIVIL RIGHTS DR. JAMES ANDERSON VS. COONEY, CHARLESTE JR. ATTY
(HOUSING DISCRIMINATION)

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Publication

Housing Discrimination

STATE OF NEW YORK : EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

STATE COMMISSION FOR HUMAN RIGHTS :

on the complaint of :

JAMES ANDERSON, :

Complainant, :

- against - :

CHARLES E. COONEY, JR., :

Respondent. :

NOTICE OF ORDER

CH-8519-62

SIRS:

PLEASE TAKE NOTICE that the within is a true copy of an order issued herein by the State Commission for Human Rights and filed with the Executive Secretary of the Commission on the 1st day of July, 1963. In accordance with Rule 11-e of the Commission's Rules Governing Practice and Procedure, copies of this order have been filed in all offices maintained by the Commission. The order can be inspected by any member of the public during the regular office hours of the Commission.

PLEASE TAKE FURTHER NOTICE that complainant, respondent, or any other person aggrieved by this order can obtain judicial review thereof in a proceeding under Section 298 of the Law Against Discrimination, and that such a proceeding must be instituted within thirty (30) days after the service of this order.

Dated: New York, New York
July 9, 1963

STATE COMMISSION FOR HUMAN RIGHTS

By /S/ George H. Fowler
George H. Fowler
Chairman

TO:

JAMES ANDERSON
Complainant
101 Medora Place
Syracuse, New York

CHARLES E. COONEY, JR.
Respondent
R. D. 2
New Woodstock, New York

HENRY SPITZ, Esq.
General Counsel
State Commission for Human Rights
270 Broadway
New York 7, New York

COSTELLO, COONEY & FEARON
(Vincent A. O'Neil, Esq., of counsel)
Attorneys for respondent
306 University Building
Syracuse 2, New York

HON. LOUIS J. LEFKOWITZ
Attorney General of the State of New York
80 Centre Street
New York 13, New York

HON. MARTIN P. CATHERWOOD
Industrial Commissioner of the State of New York
80 Centre Street
New York 13, New York

STATE OF NEW YORK : EXECUTIVE DEPARTMENT
STATE COMMISSION FOR HUMAN RIGHTS

STATE COMMISSION FOR HUMAN RIGHTS :

on the complaint of :

JAMES ANDERSON, :

Complainant, :

CH-8519-62

- against - :

CHARLES E. COONEY, JR., :

Respondent. :

ORDER OF THE STATE COMMISSION FOR HUMAN RIGHTS COMPRISING STATEMENT OF THE CASE, FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, ORDER, AND OPINION OF THE HEARING COMMISSIONERS.

Statement of the Case

On March 19, 1962, James Anderson made, signed and filed with the State Commission for Human Rights (hereinafter "the Commission") a verified complaint charging respondent with an unlawful discriminatory practice under Section 296.5(a)(1) of the Law Against Discrimination.

As subsequently amended, the complaint alleged, in substance, that complainant is a Negro; that respondent is the owner of a multiple dwelling located at 237 Croly Street, Syracuse, New York; that on or about March 12,1962, complainant inspected a vacant apartment in the aforesaid multiple dwelling and attempted to rent or lease it; that on or about March 14, 1962, respondent refused to rent the aforesaid apartment to complainant because of his color; that respondent had rented one apartment to a Negro and now refused and continued to refuse to rent further housing accommodations in the aforesaid multiple dwelling to a Negro; and that respondent has maintained and still maintains a policy of refusing to rent housing accommodations to Negroes because of their color.

The amended complaint charges that respondent has committed and continues to commit an unlawful discriminatory practice under Section 296.5(a)(1) of the Law Against Discrimination by refusing to rent or lease to complainant, because of his color, a housing accommodation located in a multiple dwelling; and has

committed and continues to commit other unlawful discriminatory practices under that section by maintaining a policy of refusing to rent or lease to Negroes, because of their color, housing accommodations located in a multiple dwelling.

The complaint was assigned to Commissioner J. Edward Conway for investigation. After investigating the complaint with the assistance of the Commission's staff, Commissioner Conway found probable cause to credit the allegations of the complaint. He endeavored immediately by conference, conciliation and persuasion to eliminate the unlawful practices complained of, but these endeavors were not successful.

Accordingly, on or about January 23, 1963, the Investigating Commissioner caused to be issued and served in the name of the Commission a notice of hearing together with a copy of the amended complaint, requiring respondent to answer the charges therein at a hearing before three Hearing Commissioners, sitting as the Commission, in accordance with Section 297 of the Law.

Respondent filed an answer denying paragraphs "First" and "Second" of the Charges in the amended complaint and setting up various affirmative defenses thereto. Respondent's answer neither admitted nor denied the allegations contained in paragraphs 1 through 17 of the Particulars in the amended complaint. Under Rule 6-d of the Commission's Rules Governing Practice and Procedure any allegation in the complaint which is not denied or admitted in the answer is deemed admitted.

Pursuant to the notice of hearing, a public hearing was held at the State Office Building, 333 East Washington Street, Syracuse, New York, on April 24, 1963, before Presiding Commissioner Bernard Katzen and Hearing Commissioners Francis X. Giaccone and Ruperto Ruiz, sitting as the Commission, the said Commissioners having been duly designated to act as Hearing Commissioners by the Chairman of the Commission, all in accordance with Section 297 of the Law Against Discrimination and Rule 7 of the Commission's Rules Governing Practice and Procedure.

Complainant and respondent appeared. Costello, Cooney & Fearon, Esqs. (Vincent A. O'Neil, Esq. of counsel) appeared as counsel on behalf of respondent. The case in support of the amended complaint was presented before the Hearing Commissioners by Henry Spitz, Esq., General Counsel for the Commission by Joan Offner, of counsel.

All parties to the proceeding were afforded full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce evidence.

In the course of the hearing, the Hearing Commissioners granted respondent's motion to amend his answer to deny knowledge or information sufficient to form a belief as to the allegations in paragraphs 7, 10, 12 16 and 17 of the amended complaint, and to deny generally the allegations in paragraphs 14 and 15 that respondent has refused and continues to refuse to rent any further housing accommodations in his multiple dwelling to a Negro, and that respondent has maintained and still maintains a policy of refusing to rent housing accommodations to Negroes because of their color.

After both sides rested, the Hearing Commissioners reserved decision.

The Hearing Commissioners have considered all the evidence and all the arguments presented by the parties.

The opinion of the Hearing Commissioners is attached hereto.

On all the evidence at the hearing, the State Commission for Human Rights by Bernard Katzen, Presiding Hearing Commissioner, and Ruperto Ruiz and Francis X. Giaccone, Hearing Commissioners, finds that respondent has committed and continues to commit unlawful discriminatory practices as defined in the Law Against Discrimination (Executive Law, Article 15) and states its findings of fact as follows:

FINDINGS OF FACT

1. Complainant, James Anderson, resides at 101 Medora Place, Syracuse, New York.

2. Complainant is and at all times mentioned herein was a doctor of medicine and captain in the United States Army.

3. Complainant is a Negro.

4. Respondent, Charles E. Cooney, Jr., resides at R. D. 2, New Woodstock, New York.

5. At all times mentioned herein, respondent owned and still owns a building located at 237 Croly Street, Syracuse, New York.

6. The said building is and at all times mentioned herein was occupied for permanent residence purposes, and is and at all times mentioned herein was rented, let, leased or hired out to be occupied as the residence or home of eight families living independently of each other.

7. The aforesaid building is and at all times mentioned herein was a multiple dwelling.

8. In February 1962 two apartments in the aforesaid multiple dwelling became vacant and available for rent and occupancy.

9. On or about March 13, 1962 complainant inspected and attempted to rent or lease one of the aforesaid apartments.

10. Complainant made a deposit payment on the first month's rent for that apartment.

11. The rent for that apartment was $125. per month.

12. At all times mentioned herein, complainant was ready, willing and able to pay $125. rent per month for that apartment.

13. At all times mentioned herein, that apartment was vacant and available for rent and occupancy.

14. On or about March 14, 1962, respondent refused to rent the aforesaid apartment to complainant.

15. The reason given by respondent for refusing to rent the aforesaid apartment to complainant was that respondent had previously rented another apartment in the same multiple dwelling to a Negro and did not want additional Negro tenants.

16. We find as a fact that respondent refused to rent or lease to complainant, because of his color, a housing accommodation located in the aforesaid multiple dwelling.

17. We find as a fact that respondent has maintained and continues to maintain a policy of limiting the number of Negro tenants in his multiple dwelling, because of their color, and refusing to rent or lease to Negroes, because of their color, any further housing accommodations in his multiple dwelling.

CONCLUSIONS OF LAW

On all the evidence at the hearing and the foregoing findings of fact, the State Commission for Human Rights makes the following conclusions of law;

1. At all times mentioned herein, complainant has been and still is an inhabitant of the State of New York within the meaning of Section 290 of the Law Against Discrimination.

2. At all times mentioned herein, the building located at 237 Croly Street, Syracuse, New York was and still is a multiple dwelling within the meaning of Sections 292.12 and 296.5(a)(1) of the Law Against Discrimination.

3. At all times mentioned herein, respondent has been and still is the owner of the aforesaid multiple dwelling.

4. At all times since the filing of the complaint herein, the Commission has had and still has jurisdiction over the person of the respondent.

5. At all times since the filing of the complaint herein, the Commission has had and still has jurisdiction over the subject-matter of this proceeding and over the complaint and the amended complaint.

6. Respondent has committed and continues to commit an unlawful discriminatory practice violating Section 296.5(a)(1) of the Law Against Discrimination by refusing to rent or lease to complainant, because of his color, a housing accommodation located in a multiple dwelling.

7. Respondent has committed and continues to commit unlawful discriminatory practices violating Section 296.5(a)(1) of the Law Against Discrimination by maintaining a policy of limiting the number of Negro tenants in his multiple dwelling, because of their color, and refusing to rent or lease to Negroes any further housing accommodations in his multiple dwelling, because of their color.

8. The application to respondent of Section 296.5(a)(1) of the Law Against Discrimination with respect to the facts of this case is in accord with the Fourteenth Amendment to the Constitution of the United States and Article I Section 6 of the Constitution of the State of New York and does not deprive respondent or any other person of liberty or property without due process of law.

9. Complainant is a person claiming to be aggrieved by an unlawful discriminatory practice within Section 297 of the Law Against Discrimination.

10. The complaint was properly made, signed and filed in accordance with Section 297 of the Law Against Discrimination.

11. The complaint was properly amended in accordance with Section 297 of the Law Against Discrimination.

DECISION

Upon all of the evidence at the hearing herein, the Commission finds and determines that since March 14, 1962, respondent, Charles E. Cooney, Jr., has committed and continues to commit unlawful discriminatory practices, violating Section 296.5(a)(1) of the Law Against Discrimination, by refusing to rent or lease to complainant, because of his color, a housing accommodation

located in respondent's multiple dwelling, and by maintaining a policy of limiting the number of Negro tenants in the multiple dwelling, because of their color, and refusing to rent or lease to Negroes, because of their color, any further housing accommodations in his multiple dwelling.

ORDER

Upon the basis of the foregoing decision, findings of fact and conclusions of law, and pursuant to Section 297 of the Law Against Discrimination, it is hereby

ORDERED by the State Commission for Human Rights (by Bernard Katzen, Presiding Hearing Commissioner, Ruperto Ruiz and Francis X. Giaccone, Hearing Commissioners) that respondent, Charles E. Cooney, Jr., and his agents, representatives, servants, employees, successors and assigns shall:

1. Cease and desist from:

   a. Refusing to rent or lease to complainant, because of his color, any housing accommodation located in the multiple dwelling at 237 Croly Street, Syracuse, New York, or any other housing accommodation within the coverage of the Law Against Discrimination which is owned by respondent or as to which he has the right to sell, rent or lease;

   b. Refusing to rent or lease to Negroes, because of their color, housing accommodations located in the multiple dwelling at 237 Croly Street, Syracuse, New York, or any other housing accommodation within the coverage of the Law Against Discrimination which is owned by respondent or as to which he has the right to sell, rent or lease;

   c. Maintaining or applying to the multiple dwelling at 237 Croly Street, Syracuse, New York, or any other housing accommodation within the coverage of the Law Against Discrimination which is owned by respondent or as to which he has the right to sell, rent or lease any quota or maximum percentage based on race, creed, color or national origin or any other specification as to the race, creed, color, or national origin of present or prospective tenants or occupants.

2. Take the following affirmative action, which, in the judgment of the State Commission for Human Rights, will effectuate the purposes of the Law Against Discrimination:

a. Offer to rent or lease to complainant the first available apartment in the multiple dwelling located at 237 Croly Street, Syracuse, New York, or in any other housing subject to the Law Against Discrimination located in the State of New York, now or hereafter owned or controlled by respondent.

b. Rent or lease all housing accommodations in the multiple dwelling located at 237 Croly Street, Syracuse, New York, and in any other housing subject to the Law Against Discrimination located in the State of New York, now or hereafter owned or controlled by respondent without regard to the race, creed, color or national origin of applicants for such housing.

c. With respect to all housing accommodations in the multiple dwelling located at 237 Croly Street, Syracuse, New York, and in any other housing subject to the Law Against Discrimination located in the State of New York, now or hereafter owned or controlled by respondent:

(1) Apply the same standards, terms, conditions and privileges in the rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith to all applicants for such housing and to all tenants thereof regardless of their race, creed, color or national origin;

(2) Transmit to the Commission forthwith a statement listing the apartments available for rent stating the address, the designation, the number of rooms and the requested rental for each apartment.

d. Issue to all persons who are now agents, representatives or employees of respondent or who may become such within one year from the date of this order, written instructions, previously approved by the Commission, explaining the requirements and objectives of the Law Against Discrimination and advising each such person of his individual responsibility for compliance with the Law Against Discrimination and his obligation to make such compliance meaningful and effective. Copies of such instructions signed by the said persons individually and acknowledging receipt and understanding thereof shall be transmitted to the Commission by the respondent

e. Post in every office now or hereafter maintained by the respondent copies of the Commission poster conspicuously in accessible and well-lighted places where it may be readily observed by those seeking housing accommodations.

f. Notify the New York State Commission for Human Rights at its office at 270 Broadway, New York 7, New York, in writing within fifteen (15) days of the date of service of this Order, as to the steps respondent has taken to comply with each ordered provision of this Order.

Dated: New York, New York
July 9, 1963

- 7 -

STATE COMMISSION FOR HUMAN RIGHTS

By

/S/ Bernard Katzen
Bernard Katzen
Presiding Hearing Commissioner

/S/ Ruperto Ruiz
Ruperto Ruiz
Hearing Commissioner

/S/ Francis X. Giaccone
Francis X. Giaccone
Hearing Commissioner

BALTHAZAR V. MARI, LTD. - CASE
1969

of Wisconsin

Please Retain Original Order

JUDGE DECKER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOUIS BALTHAZAR and DORETTA BALTHAZAR, his wife,

Plaintiffs,

-vs-

MARI, LTD., an Illinois Corporation, and ALLAN L. BLAIR; JOHN BOYLE, Chief Judge of the Circuit Court of Cook County, Illinois, as representative of all chief judges of Circuit Courts in the State of Illinois,

Defendants.

NO. 69C 898

C O M P L A I N T

Plaintiffs allege:

1. The court has jurisdiction over this action under Title 28 United States Code §1331. This is a suit of a civil nature to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States that provide for equal rights and due process of law to all persons within the jurisdiction of the United States. The amount in controversy, exclusive of interest and costs, exceed ten thousand dollars ($10,000.00).

2. Plaintiffs are citizens of the United States and

residents of Chicago, Illinois. They were the owners in fee simple of the improved real property located at 3163 West Monroe Street, Chicago, Illinois, and described as:

> Lot 1 (except East 20 feet) and East 15 feet of Lot 2 in Block 2 in Martin Lewis Subdivision of West 5 acres North of Barry Point Road in West Half of Northwest Quarter of Section 13, Township 39 North, Range 13 in Cook County, Illinois

Plaintiffs had a total investment in this property in excess of sixteen thousand dollars ($16,000.00).

3. Defendant Mari, Ltd. is an Illinois corporation with its offices at One North LaSalle Street. Defendant Allan L. Blair is the registered agent of Mari, Ltd. Mari, Ltd. is one of many corporations through which defendant Blair conducts his business of purchasing property which has been sold for back taxes.

4. On December 19, 1968, a tax deed was issued on the above described property to Mari, Ltd., in the Circuit Court of Cook County, County Division, No. 68 Co T.D. 685. The deed resulted from the purchase on March 11, 1966, by a predecessor in interest to Mari, Ltd. of a certificate of purchase (No. 17849) of the unpaid real estate taxes for the year 1964 in the amount of approximately five hundred dollars ($500.00), and from the inability of plaintiffs to redeem from the purchase within the two year period, or any extension, as provided by Illinois

law, Illinois Revised Statutes, Ch. 120, §734 (1967) with interest, penalties, and costs.

5. Defendant Allan L. Blair, individually and as agent of Mari, Ltd., has given notice to plaintiffs that he will cause the eviction of plaintiffs and their eleven minor children on or before April 26, 1969, pursuant to a purported agreement dated April 2, 1969, (Exhibit A, attached and made a part of this complaint). The purported agreement is void on its face and as executed in that it is unconscionable, lacks due consideration and/or mutuality, is against public policy, and was drafted by and on behalf of defendant Allan L. Blair, who is an attorney at law in the State of Illinois, and signed by plaintiffs who have limited schooling, and who signed under duress.

6. Unless enjoined from proceeding with the proposed eviction proceedings, defendants will deprive plaintiffs of their home. Defendants will suffer no harm from the issuance of an injunction without bond. On the other hand, plaintiffs have no adequate remedy at law and only by injunctive relief from this court can their rights be properly protected.

7. The certificate of purchase through which Mari, Ltd. obtained title to plaintiffs property was issued pursuant to Illinois Revised Statutes, Ch. 120, §726 (1967), which provides, inter alia:

> The person at such sale offering to pay the amount due on each tract or lot for the least percentage thereon as penalty, shall be the purchaser of such tract or lot: Provided, that no bid shall be accepted for a penalty exceeding twelve per cent (12%) of the amount of such tax or special assessment.

8. Under the provisions of §726 and pursuant to the provisions of the remaining portions of the Revenue Act, Illinois Revised Statutes, Ch. 120, §§697 through 757 (1967), owners of real property suffer a total forfeiture of their interest in real property which may have a value several times in excess of the owners' outstanding liability for taxes, penalties and interest. This occurs under the provisions of Section 726 when the tax purchaser bids the following statutory maximum: the outstanding tax liability plus a maximum of 12% penalty. If the property owner does not redeem within the period provided by §734, the tax purchaser becomes entitled to the entire value of the property involved. There is no public sale by which this "surplus value" (the market value of the property minus the existing liability to the taxing authority) could be returned to the owners nor is there any opportunity for the owners to bid at such a sale.

9. This existing statutory scheme gives the "surplus value" not to the owner as is common in analogous mortgage foreclosure proceedings but to other private citizens whose sole con-

tribution is the payment of existing tax liability. The taking of this "surplus value" from property owners and the corresponding gift of the "surplus value" to private citizens has no rational connection to a legitimate governmental purpose. As such, the taking of the "surplus value" from delinquent property owners constitutes a deprivation of property without due process of law and without just compensation as required by the Fifth and Fourteenth Amendments to the Constitution of the United States.

10. The defendants, chief judges of the Circuit Courts of the State of Illinois, are necessary parties to this action in that they are charged with responsibility for enforcing the statutory scheme which is challenged in this action.

11. Class Action

A. Plaintiffs -- Plaintiffs bring this action on behalf of themselves and the following category of persons pursuant to Rule 23 of the Federal Rules of Civil Procedure: (1) all persons against whom a tax deed has been issued pursuant to the statutory scheme set forth in Illinois Revised Statutes, Ch. 120,§§697-757 (1967) within the statute of limitations applicable to the instant action. (2) All persons against whom a petition for the issuance of a tax deed is pending or threatened in the courts of the State of Illinois pursuant to the aforementioned statutory scheme.

The members of this class are so numerous that joinder

is impracticable; there are questions of law and fact common to the class; the claims of the plaintiff are typical of the claims of the class and the plaintiff will adequately represent the interests of the class. In addition, if separate actions were maintained by individual members of the class, there would be a risk of: (1) inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for treatment of class members and (2) the questions of law and fact common to the members of the class predominate over questions effecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

B. Defendants - Plaintiffs bring this action against the individually named defendants and against John Boyle in his capacity as Chief Judge of the Circuit Court of Cook County and as representative of the following class of persons: the Chief Judges of the Circuit Courts of the State of Illinois. The members of this class are so numerous that joinder is impracticable; there are questions of fact and law common to the class; the defenses of the defendant are typical of the defenses of the class and the defendant will adequately represent the interests of the class. In addition, if separate actions were maintained against individual members of the class, there would be a risk

of: (1) inconsistent adjudications with respect to individual members of the class which would establish incompatible standards of conduct for each member of the class in his treatment of the plaintiffs represented in this action and (2) the questions of law and fact common to the members of the class predominate over questions effecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

WHEREFORE, plaintiffs pray that:

1. This court immediately certify to the Chief Judge of the United States Court of Appeals for the Seventh Circuit, the need for convening of a three judge court pursuant to 28 U.S.C. §2284.

2. This court declare that the provisions of Illinois Revised Statutes, Ch. 120, §726 (1967), unconstitutional, void, and unenforceable, and that the certificate of purchase, No. 17849, and the deed issued to defendants on or about December 19, 1968, void and of no effect.

3. This court declare that the purported agreement dated April 2, 1969, Exhibit A to the complaint, be null and void and of no effect, and the court enjoin the defendants from taking any steps to obtain possession of the property by writ of assistance or by any other means.

4. This court enjoin the defendants, Mari, Ltd. and Allan L. Blair, their successors and assigns, from conveying the above described real property, or otherwise encumbering the title in any manner.

5. This court grant relief for all other persons similarly situated against whom a deed has been issued within the applicable statute of limitations.

6. This court restrain the defendant class of Circuit Court Judges from enforcing the statutes hereinabove challenged.

7. This court grant such other and further relief as is just.

MARSHALL PATNER and
JOSEPH KARAGANIS
Attorneys for Plaintiffs

By:_____
Marshall Patner

PATNER & KARAGANIS
109 North Dearborn Street
Chicago, Illinois 60602
Telephone: 641-5570

EXHIBIT A

April 2, 1969

RE: 3163 West Monroe Street, Chicago, Illinois

TO WHOM IT MAY CONCERN:

I (we) the undersigned hereby acknowledge that Mari, Ltd. is now the fee simple owner of the above property and I (we) fully attorn to its title. I (we) further acknowledge and agree that I (we) have no other right, title or interest in the above property other than as tenants at sufferance of the owner, Mari, Ltd.. I (we) hereby waive any and all right to any cause of action which I (we) may have against said owner arising out of the above property, and I (we) further expressly agree that no such cause of action will be brought by me (us) or at my (our) request.

I (we) further agree that Mari, Ltd. does not waive its rights to a Writ of Assistance regarding the subject property and I (we) thereby acknowledge that such Writ may be executed at any time without further notice to the undersigned.

I (we) further agree to pay rent at a rate of $50.00 per month, commencing on the 1st day of April, 19 69, and payable each and every month thereafter on the 1st of each month.

I (we) further agree to allow the subject property to be shown at reasonable hours for purposes of resale.

I (we) further agree that I (we) the undersigned shall be fully responsible for the payment of all heat, utilities and water bills.

_____

_____

BAINES V. DANVILLE, VIRGINIA - CASE
1967

Please Retain Original Order

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9080.

Bruce Baines, et al.,
Appellants,

versus

City of Danville,
Virginia,
Appellee.

No. 9081.

The Rev. Lendell W. Chase, et al.,
Appellants,

versus

Chief Eugene McCain, et al.,
Appellees.

No. 9082.

Hildreth G. McGhee, et al.,
Appellants,

versus

City of Danville,
Appellees.

No. 9083.

Lewis, et al.,
Appellants,

versus

Bennett, et al.,
Appellees.

No. 9084.

The Rev. Lendell W. Chase, et al.,
Appellants,

versus

Honorable A. M. Aiken, Judge,
Appellee.

No. 9149

The Rev. Lendell W. Chase,
et al.,
Appellants,

versus

Chief Eugene McCain,
et al.,
Appellees.

No. 9150.

The Rev. Lendell W. Chase, et al.,
Appellants,

versus

Honorable A. M. Aiken, Judge,
Appellee.

No. 9212.

Dolores J. Page and
Margaret P. Dillard,
Appellants,

versus

Chief Eugene McCain, et al.,
Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA, AT DANVILLE. THOMAS J. MICHIE, DISTRICT JUDGE.

(Nos. 9080, 9081, 9082, 9083, 9084, 9149 and 9150 argued September 23, 1963, and No. 9212 argued January 6, 1964.
(Decided August 10, 1964.)

Before SOBELOFF, Chief Judge, and HAYNSWORTH, BOREMAN, BRYAN and J. SPENCER BELL, Circuit Judges, sitting en banc.

Arthur Kinoy for Appellants in Nos. 9080, 9081, 9082, 9084, 9149, 9150; Mrs. Ruth L. Harvey for Appellants in No. 9083; William M. Kunstler for Appellants in Nos. 9080 and 9082; S. W. Tucker for Appellants in Nos. 9080, 9081, 9082, 9083, 9084, 9149, 9150; Morris E. Lasker, Mrs. Ruth L. Harvey and William M. Kunstler for appellant in No. 9212, (Len W. Holt, Andrew C. Muse, J. L. William, Harry I. Wood, George Woody, Chester Antieau, Shellie Bowers, Richard Goodman, Dean Robb, Jack Oppenheim, Ann Cooper, Nathan Conyers, E. A. Dawley, J. A. Jordan, Ervin Miller, George L. Downing and Bertrand Pogrebin on briefs); and John W. Carter and James A. H. Ferguson for Appellees in Nos. 9080, 9081, 9082, 9084, 9149, 9150 and 9212 and Harold V. Kelly, Assistant Attorney General of Virginia, for Appellees in No. 9083.

HAYNSWORTH, Circuit Judge:

Several different questions are presented by a number of cases arising out of racial demonstrations in Danville, Virginia.

No. 9084 and No. 9150, *Chase* v. *Aiken*, No. 9081 and No. 9149, *Chase* v. *McCain*, and No. 9212, *Page* v. *McCain*, are appeals in plenary actions filed by Negro plaintiffs in the District Court, in which they seek injunctions against their prosecution in the state court upon charges of violations of a state court injunction, of an ordinance limiting the number of participants in demonstrations and picketing activity, and

the time and manner in which such activities could be conducted, and of another ordinance preventing parades without a permit. The requests for injunctive relief are based upon allegations that the state court injunction and the ordinances are unconstitutional and invalid. The complaints also request declaratory judgments that the injunction and the ordinances are unconstitutional. The District Judge did not reach the merits, because he concluded that, under the provisions of 28 USCA § 2283 and the principles of comity, he should not undertake to enjoin pending criminal proceedings in the state court.

No. 9080, *Baines* v. *City of Danville,* and No. 9082, *McGhee* v. *City of Danville,* are appeals from orders remanding to the state courts some 105 criminal cases which the defendants had undertaken to remove from the state court to the District Court. There are also petitions for writs of mandamus directed to the District Judge, which seek to present the same question of the propriety of the orders of remand as are tendered by the appeals.

No. 9083, *Lewis, et al.* v. *Bennett,* is an appeal from a denial of a temporary restraining order directed to the Virginia Employment Commission preventing it from disqualifying applicants for, or recipients of, unemployment compensation upon the ground that the pendency of criminal charges against them made them unavailable for work within the meaning of the unemployment compensation statute.

The events which underlie these several controversies are not entirely undisputed, and, since the District Judge reached the merits in none of the cases, there are no findings which settle the factual disputes. However, some testimony was taken in some of these cases, and some reference to that testimony and to the factual contentions of the parties seems appropriate.

The Negro appellants contend their demonstrations and picketing had been conducted peaceably and without violence, though a number of them were the victims of police violence on the night of June 10, 1963, when the police employed fire hoses and night sticks against them. On the other hand, city and court officials contend that the demonstrations, peaceful enough at first, became riotous and violent, resulting in personal injuries and property damage. They attempt to justify the injunction and the ordinances as a reasonable and necessary response to the excesses of the demonstrators and requisite for the preservation of peace and order.

The testimony discloses that the first demonstration in Danville occurred on Friday, May 31, 1963. It was orderly. The demonstrators had applied for no permit to parade, but city officials prepared and sent a permit to them. Other demonstrations followed on Saturday, June 1, and on Monday and Tuesday, June 3 and 4. During these demonstrations, the Negroes marched through the streets to congregate on the steps of the state courthouse. In the process, they blocked, for a time, other traffic in the streets and access through the principal entrance to the courthouse, but they inflicted no physical injury upon anyone or any property.

On Wednesday, June 5, however, they were not so restrained. As on the preceding days, a large crowd of Negroes marched to the state courthouse and occupied the main steps leading into the building. At about 4:15 o'clock, in the afternoon, they invaded the building, itself. The City Manager's office was occupied by them, though he was not present, while other demonstrators in the corridors sang, chanted, shouted, clapped, and rattled previously prepared noise makers. They ignored requests to leave until one of their leaders was arrested approximately one hour after they had entered the building.

The other demonstrators then evacuated the building, one young girl striking the Chief of Police in the face with her pocketbook as she left. She, too, was placed under arrest.

The demonstration on June 5 did not end with the evacuation of the courthouse. The crowd proceeded to a theater and a YMCA. There is testimony that some members of the crowd then began to throw bricks, bottles and rocks. Several police officers were struck by the missiles, and one missile broke a window of a hotel. When police officers undertook to take into custody one member of the crowd, then numbering some 200 to 250 persons, they were threatened and stones were hurled at them, and, after they succeeded in entering a police car, the car was hit with unidentified objects.

During most of this time traffic in the streets was blocked or impeded. One automobile, occupied by white persons, was surrounded by the crowd and rocked back and forth until police effected a rescue.

Sometime after 8:00 o'clock in the evening, after the demonstration had been going on for more than four hours, the crowd sat down in Danville's main business street, which is United States Highway 29, effectively blocking all traffic. At about that time, police summoned the Honorable A. M. Aiken, Judge of the Corporation Court of Danville. This was done pursuant to § 18.1-247 of the Code of Virginia, 1950, which authorizes judges and justices of the peace to suppress riots and unlawful assemblies, and requires them to go among, or as near as they safely may to, persons riotously or unlawfully assembled, and demand that they disperse. Judge Aiken spoke to one of the leaders of the crowd and told him to ask the demonstrators to disperse. This command was refused. Thereafter Judge Aiken told the Chief of Police that he thought the crowd would disperse if its leaders were arrested. The

Judge then left. One of the leaders of the crowd also left, but, upon a signal from the other leader, the crowd of demonstrators began to move toward a crowd of white people which had gathered nearby. The whites moved back upon police orders and the demonstrators proceeded to the Danville Public Library. There, the remaining leader of the demonstrators was again asked to disband the crowd and was arrested when he refused to do so. Leaderless, the demonstrators then began to disperse. There was testimony that thereafter, however, a small group of Negroes, armed with bricks, or half bricks, roamed the streets threatening white people and daring white motorists to leave their cars.

On the next day, upon application of the City, Judge Aiken issued a temporary injunction and restraining order which prohibited mass demonstrations and mass or violent picketing.

On the morning of Monday, June 10, there was another mass demonstration. As the crowd of Negroes proceeded up the street, several white people entered an automobile intent upon removing it and themselves from the scene. The car's engine did not promptly start, and the vehicle was surrounded by demonstrators, some of whom were swinging socks, the toes of which had been filled with rocks, at the occupants of the car. The automobile was extensively damaged, and one of its doors was torn off. At about this time, however, several of the demonstrators were arrested after which, according to the Chief of Police, the remaining demonstrators sought to rush the jail and free their confederates. Finally, this crowd was dispersed with fire hoses.

On that same night at approximately 11:00 o'clock, another crowd of Negroes assembled near the jail. This time, except that they blocked the way and refused to leave, they were neither violent nor disorderly. Because they refused to disperse,

fire hoses and night sticks were employed, and several of the demonstrators received some injury. On that occasion the police were guilty of excesses, as the demonstrators had been on earlier occasions.

There was another mass demonstration on Thursday, June 13, during which the steps of the courthouse were again occupied. There was no overt violence then.

During this period, several police cars and one automobile of a private white individual, proceeding through Negro residential areas, were fired upon and hit by bullets. Another police car had its windshield broken out by objects thrown at it by Negroes. On one of these occasions the gunfire came from an assemblage of approximately 150 Negroes.

On June 14, the City Council of Danville adopted an ordinance limiting demonstrations and picketing. It required that all assemblies and picketing be peaceful. It limited marching to a single file and required that pickets and demonstrators space themselves at least ten feet apart. It limited to six the number of pickets before any one business establishment or public facility. It prohibited all picketing or demonstrations directed to a place of business, or public facility, on days when the establishment being picketed was not open for business or during hours other than its work hours. It prohibited all picketing and demonstrations within a public building and provided that no person under the age of 18 years shall engage in demonstrations or picketing. Violation of the ordinance was declared to be a misdemeanor.

There were other events and later arrests. The arrested individuals were charged with violations of the injunction and of the ordinance. This led to the filing in the District Court of the plenary actions to restrain enforcement of the injunc-

tion and of the anti-picketing ordinance. Some 105 of the criminal cases brought under the injunction or under the ordinance were sought to be removed from the Corporation Court of Danville to the District Court, but, on motion, were remanded.

Unemployment compensation was denied some of the criminal defendants. A subordinate official of Virginia's Employment Commission ruled that, while they were then at large on bail, they were "unavailable" for work within the meaning of the unemployment compensation statute when they were awaiting trials on criminal charges which might result in their confinement.

On July 10, 1963, Danville's City Council adopted a parade-permit ordinance. This was immediately after announcement of dissolution of a District Court order, temporarily restraining further demonstrations, which had issued on July 2nd. The plaintiffs in No. 9212, a plenary action subsequently brought to restrain enforcement of the parade ordinance, contend it was a device intended and used for the suppression of further demonstrations. City officials contend, on the other hand, that adoption of the parade ordinance on July 10th was only a coincidence. There had been an earlier parade ordinance on the books, and a permit under it, though unsolicited, had been sent to the first demonstrators on May 31st. The City Attorney states that he had become convinced that the existing parade ordinance, similar to that which was considered in *City of Florence* v. *George*, 241 S.C. 77, 127 S.E. 2nd 210, was unconstitutional. He had suggested, therefore, the adoption of a new ordinance patterned upon the draft of the National Institute of Municipal Law Officers. The new Danville parade ordinance generally follows the model, but it requires

applications thirty days in advance, though the Chief of Police, "where good cause is shown" may waive the time requirement. That provision is one of the principal bases of the plaintiffs' constitutional complaint about the parade ordinance.

Since the adoption of Danville's new parade-permit ordinance, it is said there have been 263 arrests of persons charged with violations of it. The plaintiffs state in their brief in this court that 163 of the 263 had been tried and convicted, each convicted defendant receiving a suspended sentence. The suspended sentences, they say, imposed fines of $25 to $50 and imprisonment for twenty days.

One incident is much mooted. A man in the uniform of a soldier, carrying a United States flag, and four women walked up and down the street in front of the residence of Danville's mayor. When they declined to desist, they were arrested for violation of the parade-permit ordinance.

We are uninformed of other incidents leading to the many other arrests under the parade-permit ordinance, but, in due time, they led to the filing of the action attacking the constitutionality of that ordinance. The District Judge dismissed the action on the same ground upon which he dismissed the actions attacking the anti-picketing ordinance and injunction.

The resultant appeal had not reached us when we heard the appeals in the other related cases outlined above. We, therefore, withheld decision in the consolidated appeals in the other cases until this one involving the parade-permit ordinance could be heard. All of the proceedings in the District Court arising out of the Danville demonstrations, thus are now before us.

I

Refusal to Stay Criminal Proceedings in the State Courts; Restraints upon Further Arrests

The Negroes declare that their demonstrations, picketing and parading were an exercise of their First Amendment rights of peaceful assembly, of free speech, and of presentation of grievances in aid of their Fourteenth Amendment rights to be free of official discrimination. It appears, however, that their primary objective was economic. While reference was made to further desegregation of Danville's partially desegregated school system, their demonstrative demands and protests were not directed to the School Board. Other public facilities in Danville had been desegregated, as had the lunch counters in stores, which, otherwise, invited the patronage of Negroes and whites. Theaters and other restaurants remained segregated, however, and their desegregation was among the demands of the Negroes.[1] Plainly, however, they primarily wanted more of their number employed by the City of Danville and by private employers, and they wanted representation upon every board and commission of the City of Danville. If Danville discriminated against them in employment, of course, Fourteenth Amendment rights would be involved, but demands of a larger proportion of jobs available from private employers has no such constitutional foundation.

Whatever constitutional basis there may be for the substantive demands of the demonstrators, they have, unquestionably, rights of free speech and assembly guaranteed by the First Amendment, and recognition of those First Amend-

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[1] This demand is not one of recognition of a Fourteenth Amendment right. See Williams v. Howard Johnson's Restaurant, 4 Cir., 268 F.2d 845; Slack v. Atlantic White Tower System, Inc., 4 Cir., 284 F.2d 747; Williams v. Howard Johnson's Inc. of Washington, 4 Cir., 323 F.2d 102.

ment rights is required of Danville by the Fourteenth Amendment. Those First Amendment rights incorporated into the Fourteenth Amendment, however, are not a license to trample upon the rights of others. They must be exercised responsibly and without depriving others of their rights, the enjoyment of which are equally as precious. It is thus plain, for instance, that while Negroes, excluded because of their race from a privately operated theater, have a right to protest their exclusion and to inform the public and public officials of their grievance, they do not have the right, by massive occupancy of approaches to the theater, to exclude everyone else from it, or to coerce acceptance of their demands through violence or threats of violence.

If the evidence to which we have referred should be accepted by the trier-of-fact, it would necessitate the conclusion that the demonstrators exceeded the bounds within which they could lawfully exercise their First Amendment rights. Their excesses warranted some limitation upon their further conduct through an injunction, a new ordinance, or through strict enforcement of existing laws. See *Pritchard* v. *Downie*, 8 Cir., 326 F. 2d 323. Still, there remains a very substantial question as to whether or not the injunction, which was actually issued, and the ordinances, which were passed, are themselves constitutionally invalid because excessively broad, vague and restrictive. It is well established that public officials, charged with the duty of maintaining law and order, may enforce laws and injunctions reasonably necessary for that purpose, but injunctions and statutes which exceed the necessities of the situation cannot be lawfully enforced if they infringe upon constitutional rights. What is required is mutual accommodation of the rights of the public and those rights of protestants which are guaranteed by the First Amendment.

The District Judge held, however, that he could not reach

the question thus posed, the constitutionality of enforcement through criminal processes of this injunction and of these ordinances. Generally, we agree that he should not have enjoined prosecution of pending criminal charges in the state court, but we will remand for consideration of the appropriateness of an injunction against further arrests.

We start, as we must, with Title 28 USCA § 2283, which provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

This statute, literally applied, would seem plainly to require that the District Judge stay his hand, as he did, unless Congress has "expressly authorized" an injunction to stay proceedings in the state court in this type of situation. It is plain that the other two exceptions are not applicable, because there is no showing of any necessity for an injunction in aid of federal jurisdiction here, and there is no prior federal judgment to protect or effectuate. It is said, however, that "express authorization" for a stay of state court proceedings in civil rights cases is to be found in that part of the Civil Rights Act which is now incorporated in Title 42 USCA § 1983, and the related provision of the Judicial Code (Title 28 USCA § 1343) which confers original jurisdiction upon the District Courts of actions to redress state deprivation of constitutional rights. The first question, therefore, is whether or not these civil rights provisions constitute an express authorization of a stay of state court proceedings within the meaning of the first exception of

§ 2283. On this question, we have been substantially assisted by a brief filed by the United States as amicus curiae.[2]

Section 2283 is derived from § 5 of the Act of March 2, 1793, 1 Stat. 335. It originally provided simply and without qualification that an injunction shall not be granted to stay proceedings in any state court. Thereafter, the statute was amended[3] to except from its operation cases where an "injunction may be authorized by any law relating to proceedings in bankruptcy." It remained in that form until June 25, 1948 when revised[4] to read as it now does.

Nevertheless, despite the apparently unequivocal language of the predecessors of § 2283, a number of exceptions were judicially declared to exist. These exceptions were found to have arisen out of subsequent acts of Congress which appeared to authorize particular injunctive relief, and the subsequent statutes were construed to have amended pro tanto the anti-injunction act. Those statutory exceptions which were fully established by 1941 are carefully reviewed in the opinion of Mr. Justice Frankfurter in *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118, 133, 134. They consist of such things as the Removal Acts which were thought by necessary implication to authorize a stay of further proceedings in the state court after the action had been properly removed from the state court to a federal court. The statute providing for the limitation of a shipowner's liability, containing a provision that "all claims and proceedings against the owner, or owners, shall cease" was thought to have a similar implicit effect. The inter-

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[2] The American Civil Liberties Union has also filed a helpful brief as amicus curiae.

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[3] 36 Stat. 1162.

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[4] 62 Stat. 968.

pleader act of 1926 contains a very express provision authorizing an injunction against prosecution of any other suit or proceeding in any other court, state or federal, and the Frazier-Lemke Act contains a provision that after the filing of a farmer's petition, specified proceedings shall not be maintained against him in any court.[5]

Subsequent to 1941, another statutory exception was found to have arisen out of the Emergency Price Control Act of 1942.[6] Section 205(a) of that Act, authorizing the Administrator to obtain injunctions prohibiting conduct in violation of the Act, was held to authorize a federal injunction staying execution of an eviction order of a state court when the eviction would violate the Act.[7]

The anti-injunction statute, as revised in 1948, contains three general exceptions, but it is clear from the Reviser's notes that the only substantive change intended by the enlargement of the exceptions was the overturning of the result in *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118. A majority of the Supreme Court had held in Toucey that the anti-injunction statute prevented federal circumscription of relitigation in a state court of issues already fully litigated in the federal courts. The situation was analogous to a continuation of proceedings in a state court after the action had been effectively removed to a federal court. The purpose of the revision was to conform the two situations. There was also in mind the unseemliness and technical irrationality of concurrent proceedings *in rem* in state and federal courts, for the court which

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[5] See the discussion of these exceptions in Toucey v. New York Life Insurance Co., 314 U.S. 118, 133-4.

[6] 56 Stat. 23.

[7] Porter v. Dicken, 328 U.S. 252.

first seized the *res* acquired a possession which was necessarily exclusive of that of the other court. It was in recognition of these situations, and in order to overturn the result of Toucey that the 1948 revision introduced the exceptions "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The 1948 revision also qualified the literal prohibition of the anti-injunction statute with the words "except as expressly authorized by Act of Congress." This replaced the only exception earlier contained within that statute which had been limited to bankruptcy matters. The revisers stated that the change was designed to continue the bankruptcy exception and to recognize those other statutory exceptions which Congress had effectively accomplished without expressly amending the anti-injunction statute and those other exceptions which the Congress might authorize in similar fashion in the future.

We thus come to the question whether the Civil Rights Act and the Judicial Code, which confers upon the district courts jurisdiction to grant redress for deprivation by state action of Constitutional rights, constitute an express authorization by the Congress of federal stays of state court proceedings when a claimed denial of civil rights is the basis for invocation of the processes of the federal courts. This question, as such and in this context, the Supreme Court has never considered, though, as will presently appear, it has consistently applied the statute, or the underlying and closely related principles of comity, to foreclose interference by the lower federal courts with state court proceedings involving asserted deprivations of civil rights.

The recognized statutory exceptions discussed in *Toucey* v. *New York Life Insurance Co.* and mentioned above are few in number. Some of them authorize injunctions against state court proceedings in language which may be readily charac-

terized as "express." In others, the authorization is no more than implicit. The Removal Acts, for instance, contain no reference to injunctions, but the power to enjoin a continuation of state court proceedings is an obvious corollary of the power to remove the action from state to federal jurisdiction.

In strong contrast is the Civil Rights Act. It creates a federal cause of action, but with no suggestion, explicit or implicit, that appropriate relief shall include an injunction which another Act of Congress forbids. The substantive right, in many situations, may call for equitable relief, and equitable remedies are authorized,[8] but only by a general, jurisdictional grant. Creation of a general equity jurisdiction is in no sense antipathetic to statutory or judicially recognized limitations upon its exercise. Effective removal of a cause of action from a state court to a federal court is incompatible with further proceedings in the state court, but there is no incompatibility between a generally created equity jurisdiction and particularized limitations which restrict a chancellor's power or define the limits of his discretion.

The anti-injunction statue can have effective application only with respect to those matters over which the district courts have a general equity jurisdiction. If there is no jurisdiction to grant an injunction of any kind, there is no room for the operation of a narrow statutory prohibition of injunctions having a specified effect. If every grant of general equity jurisdiction created an exception to the anti-injunction statute, the statute would be meaningless.

As we have seen, the few statutory exceptions to the anti-injunction statute, which the Supreme Court in 1941 recog-

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[8] See Jordan v. Hutcheson, 4 Cir., 323 F.2d 597.

nized as having been carved out of the anti-injunction statute, rested upon statutes which were, at the least, thoroughly incompatible with a literal application of the anti-injunction statute. That much may not be said of the exception recognized in 1946 by the Supreme Court in *Porter* v. *Dicken*, 328 U. S. 252, for the predecessor of § 2283 was held not to foreclose a federal court injunction against the execution of a state court order of ejectment. Since the Price Administrator could have sought injunctive relief in the state court, there was no necessary conflict between the Emergency Price Control Act and the anti-injunction statute. The Supreme Court, however, read into the provision giving the Price Administrator the right to seek injunctive relief in either federal or state courts, the right to make the choice. It felt it could not read the statute as requiring the Price Administrator to go into the state court against his wishes, when enforcement of the statute would have been defeated altogether unless the Price Administrator obtained injunctive relief in the one court or the other.

It was subsequently held in *Leiter Minerals, Inc.* v. *United States*, 352 U. S. 220, that § 2283 had no application when the injunctive relief was sought in the federal court by the United States. Those considerations of comity which underlie § 2283 and which are designed to prevent conflicts between federal courts and the courts of a state in private litigation were thought inapplicable when the United States, itself, invoked the jurisdiction of its courts in aid of its rights and the enforcement of its laws. The same notion may have influenced the decision in *Porter* v. *Dicken*, for the Price Administrator officially represented the United States and sought only the proper enforcement of one of its public laws. He might have been authorized to seek the injunction in the name of the United States just as the Attorney General is authorized to proceed in a number of situations. The fact then that he

brought the action in his name as Price Administrator does not distinguish the situation from Leiter Minerals. *Porter* v. *Dicken,* of course, preceded Leiter Minerals, but in light of the principle subsequently expressly recognized in Leiter Minerals, we cannot read into *Porter* v. *Dicken* a predisposition in the Supreme Court to find in a general grant of equity jurisdiction an express exception to the anti-injunction provisions of § 2283.

On the contrary, when the United States is not directly involved as a party and the danger of irritating conflict with state courts is great, the Supreme Court's disposition has been toward a strict construction of § 2283. This is particularly illustrated by its decision in *Toucey* v. *New York Life Insurance Co.* It is apparent in its decision of *Amalgamated Clothing Workers of America* v. *Richman Brothers Co.,* 348 U. S. 511, 514, in which it said "by that enactment [the revision which is now § 2283], Congress made clear beyond cavil that the prohibition is not to be whittled away by judicial improvisation." In light of that admonition, this inferior court ought not lightly to undertake to relegate § 2283 to meaninglessness.

Despite these considerations, or rather without overt recognition of them, it was held in *Cooper* v. *Hutchinson,* 3 Cir., 184 F. 2d 119, that a Civil Rights Act provision for a suit in equity constituted an express authorization for an injunction against state court proceedings within the meaning of the qualification of § 2283. The court did not indicate in any way why it thought a general provision for equity jurisdiction would constitute such an exception to the anti-injunction act. It simply stated its conclusion without elucidating the problem or its reasoning. Oddly enough, the court went on to deny injunctive relief on the general principles of equity and comity exemplified by *Douglas* v. *City of Jeannette,* 319 U. S. 157, the same principles which underlie § 2283.

Later, a district court in the Third Circuit dutifully followed the lead of its Court of Appeals in *Tribune Review Publishing Company* v. *Thomas*, W. D. Pa., 153 F. Supp. 486. Oddly, again, after holding, because of the Civil Rights Act, it had power to enjoin the state court proceeding, it found there was no basis for any relief and none was awarded.[9]

On the other hand, it was held in *Smith* v. *Village of Lansing*, 7 Cir., 241 F. 2d 856, in *Goss* v. *Illinois*, 7 Cir., 312 F. 2d 257, and in *Sexton* v. *Barry*, 6 Cir., 233 F. 2d 220, that the Civil Rights Act's authorization of equitable relief was not an exception to the anti-injunction provisions of § 2283. The conclusion was reached in those cases without reference to the Third Circuit case of *Cooper* v. *Hutchinson* and without consideration of the problem in depth.

These conflicting decisions from our fellow courts in the lower echelon of the federal judicial system are of little help. Whether one follows the lead of the one or the other depends not upon the grace with which each expressed its *ipse dixit*, but upon underlying considerations which none of them explored. On one side or the other, there may have been a flash of genius, but their unelucidated conflict leaves us with no basis for reliance upon any of them.

Our analysis, which we have outlined above, leads away from the Third Circuit's conclusion in *Cooper* v. *Hutchinson*. Statutory exceptions are not so easily found from a Congres-

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[9] See, also, 1A Moore's Federal Practice ¶ 0.213[2] p. 2417, in which the author appears to approve the Cooper and Tribune cases. On the other hand, he seems also to approve the decision in Red Rock Cola Co. v. Red Rock Bottlers, 5 Cir., 195 F.2d 406, which found no exception in the antitrust acts to the operation of § 2283. He stated that the differentiating factor was the underlying purpose of the statute providing for equitable relief without suggesting what the differences were or their qualitative disparity.

sional enactment of such vintage. Unless the later statute contains, or carries with it, strong evidence or an intention to repeal the earlier, or to carve out an exception from it, a court's duty is to harmonize the two. We possess no legislative power of repeal. When we deal with valid statutes, our only role is to construe them.

Our construction is strongly supported by the Supreme Court's consistent support of the principle of § 2283 in civil rights cases. In every case before the Supreme Court in which federal interference with state court proceedings has been premised upon asserted denials of civil rights, the Supreme Court has required or sanctioned federal forbearance.[10] It has usually done so on the basis of considerations of equity and comity fashioned by it, but which are identical with those which underlie the statute. If judicial principles of equity and comity prevent federal stay of criminal proceedings in a state court, it is difficult to see how an unqualified congressional command to the same end can be ignored. If a subsequent act of the Congress is an implied repeal of the absolute congressional direction, it cannot reasonably be said not to have modified a judicially fashioned rule which, at best, is coextensive with the earlier statute. The Third Circuit's holding that the Civil Rights Act's creation of a general equity jurisdiction created an exception to § 2283, but that it could not grant an injunction because of equitable principles underlying or concomitant with § 2283 is only a denigration, unintentional of course, of the Congress.

Moreover, in *Stefanelli* v. *Minard*, 342 U. S. 117, the

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[10] Douglas v. City of Jeannette, 319 U.S. 157; Stefanelli v. Minard, 342 U.S. 117; Cleary v. Bolger, 371 U.S. 392; Wilson v. Schnettler, 365 U.S. 381. See also Watson v. Buck, 313 U.S. 387; Maryland v. Soper, 270 U.S. 9; Maryland v. Soper, 270 U.S. 36; Maryland v. Soper, 270 U.S. 44.

Supreme Court, refusing to stay state court proceedings on the basis of a claimed denial of civil rights, specifically referred to § 2283. It was said to have been born of the same concern and the same considerations which led the court to fashion a similar rule for application in situations not controlled by the statute. There is no suggestion that the Court thought the statute inapplicable in Stefanelli, or that the Civil Rights Act had carved out an exception to it.[11]

Principal reliance of the plaintiffs is placed upon certain decisions in the Fifth Circuit.

In *Browder* v. *Gayle*, M. D. Ala., 142 F. Supp. 707 (3-Judge Court) affirmed without opinion, 352 U. S. 903, the Court declared unconstitutional statutes and ordinances requiring separation of the races on motor buses serving the people of Montgomery, Alabama, and enjoined their enforcement in the criminal courts. Section 2283 was not mentioned, nor was the principle of comity exemplified by *Douglas* v. *City of Jeannette*.

The identical question of *Browder* v. *Gayle* later came before the Court of Appeals for the Fifth Circuit in *Morrison* v. *Davis*, 252 F. 2d 102. The Court authorized an injunction in a per curiam opinion on the basis of *Browder* v. *Gayle*, saying that, to the extent the issuance of the injunction was inconsistent with *Douglas* v. *Jeannette*, the Supreme Court's affirm-

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[11] See also Pugach v. Dollinger, 2 Cir., 277 F.2d 739, affirmed 365 U.S. 458. There, the Court refused to enjoin the use of wire tap evidence in a state trial, though its use in the state trial would, itself, constitute a violation of federal law. In reaching its conclusion, the Second Circuit relied in part upon § 2283 and in part upon the general principles of comity. The decision of the Second Circuit was affirmed per curiam, Mr. Justice Douglas dissenting. He thought § 2283 was inapplicable because the injunction the plaintiff sought would not stay proceedings in the state court, but went only to the state's use of particular evidence, the divulgence of which would constitute a federal crime.

ance in *Browder* v. *Gayle*, without opinion, must have modified *Douglas* v. *Jeannette* to that extent.

The situation presented in *Browder* v. *Gayle* and *Morrison* v. *Davis*, however, is unlike the one we face on this branch of these cases. Here, an injunction is sought against the further prosecution of actual, pending cases in the state court, while, in Browder and Morrison, there were no pending cases in the state courts. The question in those cases was simply whether, in order to obtain judicial determination of the constitutionality of the statutes, the plaintiffs must subject themselves to arrest and prosecution in the state courts, but even that *Douglas* v. *City of Jeannette* question was not clearly presented, for, as the Court pointed out in Morrison, the bus company could refuse service to those who refused to comply with the regulation. The probable result of defiance of the statute and ordinances, therefore, was not arrest and prosecution in the state courts, but deprivation of bus service. That was precisely the situation in *Evers* v. *Dwyer*, 358 U. S. 202. Under those circumstances, we cannot see in the Supreme Court's affirmance, without opinion, of *Browder* v. *Gayle* a retreat from *Douglas* v. *City of Jeannette*, certainly not a marked one. In any event, the holdings in that case, in *Morrison* v. *Davis* and in *Evers* v. *Dwyer* are quite distinguishable from this case to which the literal language of § 2283 is unquestionably applicable.[12]

In *United States* v. *Wood*, 5 Cir., 295 F. 2d 772, the Court had before it a proceeding brought by the United States to enjoin the prosecution in a state court of Mississippi of a Negro on a breach of peace charge. The charge grew out of efforts

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[12] Bush v. Orleans Parish School Board, E.D. La., 194 F. Supp. 182 (3-Judge Court) is equally inapposite here.

by the Negro to secure the registration as voters of other Negroes. It was alleged, and the Court found, that the prosecution was designed to, and did in fact, intimidate other qualified Negroes from registering as voters.

In Wood, § 2283 was inapplicable, for the suit was brought by the United States.[13] A majority of the Court thought *Douglas* v. *City of Jeannette* inapplicable because a majority found much more at stake than the liberty of the defendant in the state court proceedings. *Douglas* v. *City of Jeannette* was inapplicable, the majority thought, because, while the proceedings in the state court might be an adequate remedy for the protection of the defendant in those proceedings, it was not adequate for the protection of the voting rights of those who were deterred from registering because of the prosecution of those proceedings.

The plaintiffs here contend that, as in Wood, their prosecution is intended to intimidate others in the exercise of their First Amendment rights of assembly and of free speech, but, on this branch of this case, it is only the state court defendants who are complaining, not the United States in behalf of others who conceivably might be deterred in the exercise of some First Amendment right by reason of the prosecution of these plaintiffs. While this contention gives us no pause as to the applicability of § 2283, it bears heavily upon the propriety of an injunction forbidding further arrests. Before we reach that question, however, we should dispose of a final contention bearing on the applicability of § 2283.

The Fifth Circuit's decision in Wood is also said to bear upon our problem because the Court there held that issuance of the injunction against the state court prosecution was author-

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[13] Leiter Minerals, Inc. v. United States, 352 U. S. 220.

ized by 42 USCA § 1971(c), which is said to be parallel in scope to a criminal provision, 18 USCA § 242, which, in turn, is said to be co-extensive with 42 USCA § 1983, the Civil Rights Statute with which we are concerned. This contention proves nothing, however. We have assumed at the outset that § 1983 did authorize an injunction here were it not for the prohibition of § 2283, the anti-injunction statute. Section 1983 does confer a general equity jurisdiction, as we have noted above, but the fact that a comparable statute does the same thing does not mean an exercise of the equity jurisdiction conferred by § 1938 is not subject to the limited restriction of § 2283.

The Court of Appeals for the Fifth Circuit recognizes, of course, the vitality of § 2283.[14] We find nothing in the cases upon which the petitioners rely which support their position here. We do find support for our present conclusion, however, in *Henderson* v. *Trailway Bus Company*, E.D. Va., 194 F. Supp. 423 (3-Judge Court case) affirmed *sub nom Robinson* v. *Hunter*, 374 U. S. 488, in which the court refused to enjoin a state court prosecution of Negro "sit in" demonstrators as trespassers.

Though we hold that § 2283, except when the United States is a party, applied to an attempt to enjoin then pending proceedings in a state court, is at least as broad as the judicially developed principle of comity which forbids federal interference with state court proceedings, it is not a jurisdictional statute.[15] It is a limitation upon the exercise by a Dis-

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[14] Williamson v. Peurifoy, 5 Cir., 316 F.2d 774.

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[15] Smith v. Apple, 264 U.S. 274; Woodmen of the World v. O'Neill, 266 U.S. 292; First Nat. Bank & Trust Co. of Racine v. Village of Skokie, 7 Cir., 173 F.2d 1; American Optometric Ass'n. v. Ritholz, 7 Cir., 101 F.2d 883; Jamerson v. Alliance Ins. Co. of Philadelphia, 7 Cir., 87 F.2d 253; T. Smith and Son v. Williams, 5 Cir., 275 F.2d 397.

trict Court of its equity jurisdiction. It was born of the realization of the problems which would arise if the Courts of the United States undertook to interfere with proceedings in state courts. It was fathered by the same principles of comity exemplified by *Douglas* v. *City of Jeannette,* 319 U. S. 157. Since the statute was fathered by the principles of comity, it has been held that the statute should be read in the light of those principles and, though absolute in its terms, is inapplicable in extraordinary cases in which an injunction against state court proceedings is the only means of avoiding grave and irreparable injury.[16] In our view, the congressional command ought to be ignored only in the face of the most compelling reasons, but we have certainly been told by the Supreme Court that in those circumstances it may be disregarded, for its parentage discloses that it was not intended to be as absolute as it sounds.

That is not to say, however, that the Congressional command of § 2283 may be disregarded for no other reason than the strong inclination of a court or a party. Congressional enactments have a force which surpasses that of the principles which underlie them. When the meaning of statutes is doubtful, we may turn to their purpose to construe them, and, in the face of a positive command of the Supreme Court, we must disregard their literal language when its application far exceeds its purpose. Judicially fashioned rules are more malleable. This is the plain teaching of a number of cases.[17] If an injunction against the prosecution of pending criminal proceedings

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[16] See cases cited in Footnote 15, supra.

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[17] See Cline v. Frink Dairy Company, 274 U. S. 445; and Ex parte Young, 209 U. S. 123, holding that, while injunctions against prosecution of pending criminal proceedings in a state court were proscribed, injunctions against initiation of further prosecutions were authorized.

in the courts of a state is proscribed by § 2283, a prohibition of further arrests and charges may not be within the judicial extension of the principle exemplified by *Douglas* v. *City of Jeannette*.

Recognizing that the command of § 2283 is not always absolute, we granted a temporary injunction pending appeal of this case.[18] We did so upon a showing that, among other things, defendants convicted of violations of the ordinance and injunction had been sentenced to prison terms and denied bail pending appeal. Unless the Supreme Court of Appeals of Virginia released them on bail, and application to that court would have been more seemly and probably more rewarding, their prison terms would have been fully served before an appeal from a conviction could have been heard by that court. More importantly, over the protests of the defendants in the state court, many of their cases had been transferred to other courts of Virginia, some as many as two hundred miles away. The requirement that such a defendant, particularly if he were indigent, go so far away to defend himself upon the charge of a violation of a local ordinance and injunction and to produce witnesses in his behalf at such remote locations seemed eminently unfair. Still more importantly, such an injunction was essential if the controversies were not to become moot while these appeals were being perfected, heard and determined in this court. We concluded that it was such an extraordinary situation that issuance of a temporary injunction staying prosecutions in the state courts pending our disposition of this appeal was authorized notwithstanding § 2283.

Since our temporary injunction was issued, however, we have been able to consider these appeals in orderly fashion, and

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[18] Baines v. City of Danville, 4 Cir., 321 F. 2d. 643.

we are told the situation has undergone substantial change for the better. The order transferring cases away from Danville has been rescinded. We have no reason to conclude that in the quieter atmosphere of the present anyone convicted of a violation of one of the ordinances or the injunction who takes a proper appeal will not be released on bail pending review of his conviction. There is no other basis for an assumption, or a conclusion in advance, that a trial in the Corporation Court of Danville of any of these defendants would be unfair. Under these changed circumstances after the temporary injunction has served its primary purpose of protecting the justiciability of the questions in these appeals, we think a continuation of our temporary injunction is unwarranted and that it should be dissolved.

The unfairness which appeared to warrant in part the temporary injunction appeared in connection with the first prosecutions under the ordinance and the injunction. Demonstrations were then continuing. There were many arrests; passions were high, and the burdens imposed upon the Corporation Court of Danville by the numerous cases were not diminished by the insistence of all the defendants that each be tried individually, though arrested as groups. Now that things have simmered down, different attitudes may be expected. If anyone should be wrongly convicted in the Corporation Court of Danville, he may obtain review of his conviction by the Supreme Court of Appeals of Virginia, a court which merits the high reputation it enjoys. If important constitutional questions are present, they may be determined by the Supreme Court of the United States upon certiorari to the Supreme Court of Appeals of Virginia.

As suggested above, the judicially fashioned principle of *Douglas* v. *City of Jeannette,* unlike the congressional com-

mand of § 2283, is readily susceptible to judicial modification when the circumstances require it. The courts which developed and declared the principle have the power to define its limits. We thus come to consider whether, having concluded that § 2283 proscribes a further stay of pending proceedings in the state court, some relief respecting future arrests may not be appropriate.

When the actions involving the anti-picketing ordinance and the injunction were before the District Court, it did not appear that their enforcement would, or could, result in a completely effective suppression of further exercise by the plaintiffs and their sympathizers of their First Amendment rights. The restrictions of that ordinance and the injunction were far from absolute. Under them, orderly, but not massive or riotous, parades, picketing, speech and assembly were clearly permitted. As it then appeared, the plaintiffs could make their voices heard without violation of the anti-picketing ordinance or the injunction.

When, later, the parade-permit ordinance came before the District Court, considered alone, it well may have been thought that it also left ample room for the voices of those who felt aggrieved.

Considering together the cumulative restraints, however, we cannot dismiss out of hand the plaintiffs' contention of excessive and unreasonable suppression of their further exercise of First Amendment rights. They here assert, in effect, that the parade-permit ordinance has been employed to frustrate the realization of the promise of the exceptions to the anti-picketing ordinance and the state court injunction. The one incident arising under the parade ordinance which is discussed here may lend credence to this assertion. The five

persons who walked up and down the street in front of the mayor's home, considered as pickets, appear to have been well within the exceptions to the anti-picketing ordinance and the injunction. Whether, because one of them was in the uniform of the United States Army and carried a United States flag and because of their order of march, they might properly have been thought not pickets, but illegal paraders, we cannot finally determine on this record. It prompts inquiry, however, as to the circumstances of the arrests of those five and of the other 258 people charged with violation of the parade ordinance. If, as the plaintiffs here contend, the parade ordinance has been utilized to prohibit the kind of regulated, orderly picketing contemplated by the permissive provisions of the anti-picketing ordinance, such a massive, complete denial of a minority's reasonable efforts to exercise its First Amendment rights would leave a naked city no claim upon the mantle of *Douglas* v. *City of Jeannette*. The enduring principle must take account of circumstances and should not occasion a complete abnegation of the constitutional rights of those who are not involved in other judicial proceedings to adjudicate their rights and who are unwilling to invite criminal prosecution of themselves. Those already involved in pending criminal proceedings and others who might be expected to flaunt the challenged law in order to obtain an adjudication of their rights may be left to their remedies at law in the state courts, but if the probable criminal sanctions are so great and the suppression so heavy as to result in a massive stifling of large numbers of people, their legal remedies may no longer be said to be adequate.

Douglas v. *City of Jeannette* held that plaintiffs challenging the validity of a state's criminal statute may be relegated to their legal remedy in the state criminal court, if that remedy is adequate. The remedy available to the Douglas plaintiffs was held to be adequate in the circumstances there, but in

different circumstances, analogous to the situation which exists here in the eyes of the plaintiffs, similar remedies have been held inadequate. *United States* v. *Wood,* 5 Cir., 295 F. 2d 772; *Denton* v. *City of Carrollton,* 5 Cir., 235 F. 2d 481; *City of Houston* v. *Jas. K. Dobbs Co. of Dallas,* 5 Cir., 232 F. 2d 428; see also, *Cline* v. *Frink Dairy Co.,* 274 U. S. 434 and Ex parte Young, 209 U. S. 123. *United States* v. *Wood* is particularly apposite here. In considering the problem arising under § 2283, we distinguished Wood, for § 2283 had no application there. We follow it here, however, for restraints upon future prosecutions are beyond the reach of § 2283. As we observed earlier, the suppressive effect of the threat of future arrests is comparable to the collaterally suppressive effect of the prosecution in Wood.

As we have indicated, we do not have the benefit of findings of fact or even of a full evidentiary record. We have heard only the assertions of counsel as to what the facts are. The plaintiffs' informal offer of proof, however, is enough to require judicial inquiry as to what the facts are. When they have been found, it then may be determined whether some injunctive relief against future prosecutions is appropriate.

To that end, the judgments in Nos. 9081, 9084, 9149, 9150 and 9212 will be vacated and the cases remanded for further proceedings consistent with this opinion.

When the District Court has determined the facts, it need not resolve the constitutional questions arising out of the contentions that the ordinances and the state court injunction facially are unduly broad. Those questions will be answered in the pending state court proceedings. He should restrain further arrests under the ordinances and the injunction, until their constitutionality has been determined, only if he finds that in combination they have been applied so sweepingly as to leave no reasonable room for reasonable protest, speech and assem-

blies, and thus, in application, are plainly unconstitutional. If he should find that some injunctive relief is appropriate, it should be no broader than the necessities of its purpose. He should, of course, impose no interference with the enforcement of other laws relating to breaches of the peace, the dispersal of mobs and the suppression of riots. He shall have the discretionary right, at any time, to modify any injunctive order he may issue if it shall appear that modification is necessary to enable the City of Danville to maintain order in the community or to insure enjoyment of the rights his injunctive order purports to protect.

The temporary injunction heretofore issued by this court will be dissolved.

II

Review of Order Remanding Cases to the State Court

The defendants in 105 criminal prosecutions brought under the anti-picketing ordinance and injunction undertook to remove those cases to the District Court. The District Court remanded them upon the ground that their removal was not authorized by 28 USCA § 1443. From that order the defendants in the removed cases undertook appeals and filed petitions for writs of mandamus directed to the District Court, by which they seek to tender the same question tendered by the appeals.

This Court has no jurisdiction to review the remand of the cases by appeal or by mandamus. Title 28 USCA § 1447(d) plainly provides "an order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise."

The defendants in the criminal cases seek to avoid the unequivocal and explicit language of § 1447(d) by reference to § 5 of the Act of March 3, 1887.[19] The contention requires some reference to the evolution of present § 1447(d).

Prior to 1875, a remand of a removed case was not reviewable on appeal or writ of error for the order was not final.[20] It was suggested, however, that review might be had by mandamus.[21] By § 5 of the Act of March 3, 1875,[22] however, provision was made for the review of remand orders by appeal or writ of error. Orders of remand only were made appealable; orders denying remand, while reviewable, as they always had been, after the entry of a final order adverse to the movant disposing of the entire case, were not immediately reviewable by appeal, writ of error or mandamus.[23]

Section 5 of the Act of March 3, 1875 providing for appeals from remand orders was repealed by the Act of March 3, 1887,[24] corrected by the Act of August 13, 1888.[25] Section 2 of the Act of 1887 as corrected by the Act of 1888 contains the following provision:

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[19] 24 Stat. 553.

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[20] Railroad Company v. Wiswall, 90 U.S. (23 Wall.) 507; In re Pennsylvania Co., 137 U.S. 451.

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[21] Railroad Company v. Wiswall, 90 U.S. (23 Wall.) 507; see also In re Pennsylvania Co., 137 U.S. 451; Employers Corp v. Bryant, 299 U.S. 374.

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[22] 18 Stat. 472.

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[23] Ex parte Hoard, 105 U.S. 578; Ex parte Harding, 219 U.S. 363; Ex parte Roe, 234 U.S. 70.

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[24] 24 Stat. 553.

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[25] 25 Stat. 433.

> "Whenever any cause shall be removed from any state court into any circuit court of the United States, and the circuit court shall decide that the cause was improperly removed, and order the same to be remanded to the state court from whence it came, such remand shall be immediately carried into execution, and no appeal or writ of error from the decision of the circuit court so remanding such cause shall be allowed."

That provision was carried into § 28 of the Judicial Code, from which the present § 1447(d) was derived.

The Act of 1887 included a provision in its § 5 that nothing in the Act of 1887 should be construed to repeal or to affect any jurisdiction or right mentioned in Revised Statutes §§ 641, 642, 643. Revised Statutes, § 641 was a mesne antecedent of present § 1443, the civil rights provision which is the foundation of the position of the defendants in the removed cases.

The defendants in the removed and remanded cases thus contend that the limitation of § 5 of the Act of 1887 either preserved the right of appeal granted by the Act of 1875 or a right of review through a writ of mandamus. The latter is the real contention.

We can read no such provision into the Act of 1887. Clearly the intention of the Act of 1887 was to abolish all appeals from orders of remand which had been conferred by the Act of 1875. And § 5 of the Act of 1887 is not susceptible to a construction that Congress intended to restore a right to review remand orders through mandamus, a right which was unavailable after the Act of 1875 and until the effective date of the Act of 1887. Such a right of review was no part of the jurisdiction or rights mentioned in Revised Statutes § 641.

Revised Statutes § 641 related exclusively to the jurisdiction of the District Court (then the Circuit Court) and the assertion of rights in that court. It had nothing to do with appellate review.

If, however, § 5 of the Act of 1887 might have had any such effect as contended by these defendants in the remanded cases, the effect did not survive the adoption of the Judicial Code, enacted March 3, 1911. Section 641 of the Revised Statutes was repealed by the Judicial Code[26] though its substance was carried into § 31 of the Judicial Code. The Judicial Code contained nothing comparable to § 5 of the Act of 1887.

If there were any possible doubt about the congressional intention, it should have been demolished when, in 1949, the Congress amended § 1447(d) by adding the words "or otherwise" to make it read as it now does, that remand orders are "not reviewable on appeal or otherwise." Those words had been included in the Act of March 3, 1911, but, apparently, were omitted when the code was extensively revised in 1948. The omission in 1948 was thought to be a possible source of doubt and it was for that reason that the words were restored by the 1949 amendment. The report of the Senate Committee on the Judiciary said that the purpose of the 1949 amendment was "to remove any doubt that the former law as to the finality of an order of remand to a State court is continued."[27]

Resourcefully, but not persuasively, the defendants in the 105 remanded cases contend that § 1447(d), construed as it reads, is unconstitutional as applied to them. They reason that

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[26] 36 Stat. 1168.

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[27] 2 U. S. Code Cong. Serv. 81st Cong., 1st Sess. 1949, p. 1268.

they are Negroes while the prosecutor in Danville is white. Since after final acquittal in the District Court the white prosecutor, or the City of Danville, whom he represents, could obtain appellate review of an order refusing to remand the cases, they say they are deprived of equal protection of the laws when denied appellate review of the remand orders. It happens, of course, in this instance that these defendants are colored and the man who holds the office of prosecutor is white,[28] but § 1447(d) applies disparately wholly without regard to the race of the one who seeks appellate review of remand orders, There is no racial discrimination in it, for it applies evenhandedly and forecloses appellate review of every remand order by whomever it is sought.

The fact that after final judgment a plaintiff in a civil case or the state or municipality in a criminal case can obtain appellate review of an order refusing to remand the case to the state court from which it was removed, does not deprive defendants in such cases of equal protection of the laws. If the District Court should have remanded the removed cases, but did not, the failure affects the jurisdiction of the court and that is always a matter to be considered on appeal. If the District Court remands a removed case when it should not, no jurisdictional infirmity is created. There is no compelling reason for federal appellate review of an order of remand.

The removal acts give certain advantages to defendants. That they have no right to any appellate review of any remand orders puts them to some relative disadvantage, but the difference inheres in the situation. Interlocutory appeals from orders granting or refusing remand would be seriously disruptive of the case and hurtful to judicial administration. If the order refusing remand is reviewable, it is only because the case pro-

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[28] The City of Danville has no race.

ceeds to final judgment in the District Court, while, after a remand of the case to the state court, there is never a final, reviewable order in the federal court. This sort of difference, avoidable only at the cost of grave disruption of judicial processes, is in no sense a denial of equal protection of the laws.

We conclude that the orders remanding the 105 criminal cases to the state courts are not reviewable on appeal, by mandamus or otherwise.

III

Denial of Unemployment Compensation Benefits

On the first administrative level, two of the defendants in the criminal cases were denied further unemployment compensation benefits. At the time, they were at large on bail awaiting trial. The denial of unemployment compensation was upon the theory that the recipients had become "unavailable" for work, within the meaning of the statute. Virginia's Employment Commission, in other contexts having no racial connotations, had ruled that one at large on bail under criminal charges which might result in confinement was not "available" for work within the requirement of the statute.

Instead of pursuing their administrative and state judicial remedies, the claimants filed in the District Court, on behalf of themselves and others similarly situated, an action for an injunction and for damages. They named as defendants the Director and an Examiner in the Danville office of the Commission, but did not serve them or anyone else. The claimants applied to the Court for a temporary restraining order which was denied. They seek to appeal that ruling.

The named defendants through the Counsel for the Vir-

ginia Employment Commission moved to dismiss the appeal because of the want of process. The motion must be granted.

Rule 65 of the Federal Rules of Civil Procedure contemplate *ex parte* applications for temporary restraining orders, but they may be granted only when it appears that the applicant will suffer irreparable injury unless the restraining order is granted before notice to the adverse party and an adversary hearing. If such a restraining order is granted, prompt notice to the adverse party is required. If, as here, the court refuses such an order, no process of any kind having issued, nothing remains before the court unless and until process is served. After service of process, the applicant may apply for a temporary injunction, but, if there has been no service, there is no foundation for further proceedings against unserved parties.

The plaintiffs seek to avoid dismissal by a contention that the defendants have entered a general appearance, which, of course, is equivalent to personal service. We cannot find that they have.

In four of the five related cases which we initially heard together, the adverse parties in the District Court were the City of Danville or its officials. Attorneys for Danville and its officials applied for extensions of time within which to answer. Orders granting an extension of time were filed in the four cases in which those attorneys were authorized counsel and in this one as well. The plaintiffs contend this constituted a general appearance by these defendants, employees of the Virginia Employment Commission.

These defendants have filed affidavits stating they never authorized the attorneys for Danville and its officials to represent them. An Assistant Attorney General of Virginia is permanently assigned as Counsel of the Virginia Employment

Commission and he, alone, is the regularly authorized attorney for that Commission and its employees in matters affecting the Commission's administration of the statutes. He entered no appearance in the District Court and sought no extension of time.

After a preliminary application to this Court, during which this case was not discussed, the appellants and the appellees were each directed to file a brief, each side to cover in one brief all five cases then before us. A brief was filed by the attorneys for the several appellees. It contained a section dealing with this case prepared by the Counsel for the Employment Commission and raising the jurisdictional question. On the cover sheet and elsewhere, his name appears with those of the attorneys for appellees in the other four cases. In the light of the direction of this Court, however, we cannot infer from these circumstances that the Counsel of the Commission represented anyone other than these defendants, employees of the Commission, or that they had authorized anyone other than the Commission's Counsel to represent them.

Finding no general appearance by the defendants in this case of Lewis v. Bennett, the purported appeal must be dismissed because no action has ever been effectively commenced in the District Court.

We intimate no opinion as to whether or not this controversy would be cognizable in the District Court in the absence of any effort to pursue available state administrative and judicial remedies.

Denial of temporary injunctions staying pending criminal proceedings in the state court, the subject of the appeals in cases No. 9081 and 9084 is affirmed. The judgments in cases No. 9149 and 9150, appeals from final orders of dismissal in

the same cases involved in No. 9081 and 9084, and the judgment in No. 9212 are vacated and the cases remanded to the District Court for further proceedings in accordance with this opinion. The temporary injunction heretofore issued by this Court is dissolved. The appeals in cases No. 9080, 9082, and 9083 are dismissed.

SOBELOFF, Chief Judge, and J. Spencer Bell, Circuit Judge, concurring in part and dissenting in part:

The plaintiffs have alleged that the official and unofficial power structure of the white community has been successfully mobilized to deny them their first amendment rights to protest their relegation to second class citizenship. They allege that the police, by means of violence and brutality exercised during wholesale arrests upon trumped up charges; the judiciary by means of broad and vague injunctions; the City Council by means of its unconstitutional ordinances against picketing and parading, have succeeded in crushing the minority's carefully organized effort to express its discontent with the status quo.

If this can be proven, even if the ordinances are facially constitutional, we think the very exceptional circumstances recognized by the court in *Douglas* as justifying injunctive relief, exist here. If that is true then 28 U. S. C. § 2283 does not relieve the federal courts of their obligation to protect the plaintiffs' constitutional rights.

Therefore, we cannot agree that the district court had no discretion to entertain the plenary suits on the merits and to issue any restraining orders or injunctions necessary to protect the plaintiffs' rights therein, including an injunction against

both pending and further criminal prosecutions under the ordinances and injunctions in question.[1]

The defendants assert that the plaintiffs' conduct endangers the rights of other citizens, especially the property rights of the merchants and business men located at the scene of the demonstrations. Doubtless fear exists on both sides, but this does not justify a denial to the plaintiffs of their day in court. Free speech is protected even though often provocative. *Cf. Edwards* v. *South Carolina,* 372 U. S. 229, 237 (1962). This is not to say that we would condone violence or disobedience to the law, but if we accept the plaintiffs' allegations, as we must for the purpose of this appeal, the violence here was that of the defendants incited and engaged in to prevent the plaintiffs from lawfully and peacefully exercising their first amendment rights.

The majority concedes that exceptional circumstances existed which justified the issuance of our restraining order last August. *Baines* v. *City of Danville* 321 F. 2d 643 (4 Cir. 1963). That "the situation has undergone substantial change for the better" and that "things have simmered down" are conclusions which we are not entitled to draw until the district court has found the facts. In so concluding, the majority opinion has unwittingly prejudged the facts of the case. Furthermore, these conclusions are not pertinent. They do not prove that the exceptional circumstances which justified our restraining order have passed. It could mean that the plaintiffs are no longer being interfered with in expressing their rights. On the other hand it could mean that the plaintiffs have been so cowed

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[1] No objection is raised to the refusal to entertain an appeal from the district court's order remanding the removed cases to the state court. (But see Civil Rights Act of 1964, Public Law 88-352; 78 Stat. 241 (July 2, 1964) Section 901, *Stat. amending,* 28 U.S.C. § 1447 (d)). Nor is there any disagreement with the conclusion that no proper service was obtained on the Virginia Employment Compensation Commission.

that they no longer dare to express themselves, and this was their contention at the argument of the appeal, and if so, the exceptional circumstances which were absent in *Douglas* are abundantly present here.

We are here concerned not only with the immediate effect of the prosecutions on the 105 defendants; we are more concerned with the ultimate effect which the prosecutions will have on the plaintiffs' attempts to express their grievances by organized effort.[2] The effect apprehended is only minimally diminished by the state court's withdrawal of its astounding order scattering the prosecutions throughout the entire state.

The plaintiffs have alleged a cause of action within the provisions of 42 U.S.C. § 1983. If the facts alleged are true, only the most cynical of observers would contend that first amendment rights of the entire Negro community would

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[2] This was the basic issue in *United States* v. *Wood*, 295 F.2d 772 (5 Cir. 1961), where the alleged intimidation was directed to the exercise of the voting rights of the Negro community; i.e., public civil rights as distinguished from the private rights of the individual, Hardy, who had no right to vote in Mississippi in any event. The majority would distinguish *Wood* on the ground that the United States was a formal party. Here the United States requested and obtained permission to appear in the case as amicus curiae. We would not draw such a fine distinction. Here, too, we are concerned with public civil rights. An irreparable injury to such important rights which was clear and imminent would constitute the judicially engrafted exception to the rule of comity which forbade equitable interference by the federal courts with state criminal prosecutions. *Douglas* v. *City of Jeanette*, 319 U.S. 157, 163 (1942). *Douglas* is distinguishable on the facts because no such clear and imminent irreparable injury was found there as is alleged in this case. Furthermore there is justification for the belief that the harsh doctrine of *Douglas* requiring defendants to run the gamut of criminal prosecution to secure their constitutional rights in the factual context here alleged to exist is undergoing modification.

> "This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct cause of action. . . . To the extent that this is inconsistent with *Douglas* v. *Jeanette*, Pa., 319 U.S. 157. . . . we must consider the earlier case modified [by *Browder* v. *Gayle* 142 F.Supp. 707 (M.D. Ala.), *affirmed*, 352 U.S. 903 (1956)]." *Morrison* v. *Davis*, 252 F.2d 102, 103 (5 Cir. 1958,), *cert. denied*, 356 U.S. 968.

not be irreparably injured if these prosecutions and these ordinances are allowed to achieve their alleged objectives. Comity does not require the federal courts to sit idly by when only an equitable remedy can effectively protect these rights. *Jordan* v. *Hutcheson,* 323 F. 2d 597, 601 (4 Cir. 1963). It is the duty of the federal courts to protect these rights and the statute, 42 U.S.C. § 1983, expressly authorizes equitable relief. The precious first amendment rights of our citizens are beyond pecuniary evaluation. *Hague* v. *Committee for Industrial Organization,* 307 U. S. 496 (1939). Since it is obvious that in the context of this case no other civil remedy could possibly accomplish the Congressional purpose to afford the Negro citizen equal rights, there is every reason to hold that the equitable remedy expressly authorized in 42 U.S.C. § 1983 is within the exception set forth in 28 USCA § 2283. *Cooper* v. *Hutchinson,* 184 F. 2d 119, 124 (3 Cir. 1950).

The plaintiffs allege that the ordinances and the state court's injunctive order are unconstitutional on their face. The majority does not reach this question so far as the plaintiffs are concerned, but enjoins future prosecution under the ordinances and injunction. This is a strange and unwarranted dichotomy. Since the hearing of the appeal in this court, a similar situation was presented to a three judge court in the Fifth Circuit. There the court declared unconstitutional on their face an "unlawful assembly statute" and an "insurrection statute" and enjoined prosecution of the plaintiffs in proceedings already begun under those statutes. *Aelony* v. *Pace,* C.A. No. 530, *Harris* v. *Pace,* No. 531 (M.D. Ga., Americus Division, 1963). So here, the question of the constitutionality of the ordinances and the injunction, which the court declines to face, should be faced. In *Bailey* v. *Patterson,* 323 F.2d 201 (5 Cir. 1963), the court, citing *Evers* v. *Dwyer,* 358 U.S. 201 (1958), pointed out that the law is now crystal clear that

one does not have to subject himself to arrest and prosecution to test the constitutionality of state laws.

We would direct the district court to hold a preliminary hearing, and if it appears that plaintiffs' allegations with respect to the pending prosecutions are well founded, to issue a temporary injunction until the case is heard. If after a full hearing the facts are found to be as alleged and the district court should in its discretion conclude that a clear and imminent danger of irretrievable injury to the plaintiffs' first amendment rights exists, then both pending and future criminal prosecutions should be enjoined. By retaining jurisdiction of the case, the court could modify its order in any way necessary to protect the rights of all the citizens of Danville against excesses by either side.

I

PAPERS IN BAINES, ET AL. V. CITY OF DANVILLE, VIRGINIA, NO. 9080, and MC GHEE, ET AL. V. CITY OF DANVILLE, VIRGINIA, NO. 9082

1. Petition for Removal in McGhee

TO THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA:

Your petitioners, respectfully show:

1. That the above entitled proceeding was brought in the Corporation Court of the City of Danville, Virginia, and is now pending therein.

2. That the said proceeding is brought to punish the aforementioned plaintiffs for the violation of a certain temporary injunction and restraining order issued by the Honorable A. M. Aiken, the Judge of the said Corporation Court of the City of Danville, Virginia.

3. That petitioner is one of the Attorneys for the above named plaintiffs.

4. That said plaintiffs, all of whom are members of the Negro Race, are charged with violation of the aforesaid temporary injunction and restraining order.

5. That said temporary injunction and restraining order are in violation of the Civil Rights of said plaintiffs hereto as prohibited by subsections 1 and 2 of Section 1443, Title 28, United States Code, and are therefore subject to removal to this Court pursuant to the provision of said statute.

6. That the aforesaid temporary injunction and restraining order violate the Constitution of the United States and the Amendments thereto by making criminal, conduct which is pro-

tected by the First, Fifth and Fourteenth Amendments to the Constitution of the United States and other Amendments thereto.

7. That plaintiffs are denied and/or cannot enforce in the Courts of the State of Virginia rights under the Constitution and laws of the United States providing for the equal rights of citizens of the United States and all persons within the jurisdiction thereof, and/or are being prosecuted for acts under color of authority derived from the Constitution and laws of the United States.

That the plaintiffs herein are denied all rights and cannot secure a fair trial and have no right under the Constitution of the United States in the local courts is illustrated by the following:

a. The Court refused and refuses to allow the petitioners to challenge the validity of the subject injunction under which the petitioners are being tried, hence the petitioners may be convicted under an invalid injunction.

b. That the subject injunction under which the petitioners are being tried and prosecuted is one that is personally directed to persons other than the petitioners (Dunlap, Campbell, Adams, et als) who sued the City of Danville and the Court with regard to the racial signs and racial segregation practiced in the Courtroom.

c. Judge Aiken, the presiding Judge, is the only person in Danville with jurisdiction to preside over the trials of these petitioners.

d. Judge Aiken, has personally intervened and sought to cause the protest over racial segregation to end by going before the named persons in the injunction and ordering peaceful protest to disburse.

e. That the Court held most of the above named petitioners for three days without any bail in denial of all rights regarding bail as provided under the United States Constitution.

f. That the Court has already sentenced one 17 year old youth to jail for 45 days and denied bail pending appeal, which is tantamount to denying appeal even though no evidence of the proclivities or character of the convicted person was shown. The court has indicated that all 105 of the persons accused of violating the injunction will be treated likewise.

g. That the juvenile petitioners are being denied the right to probationary reports and treatment as juvenile as provided by state law; the one juvenile sentenced on 17 June was sent to the City Farm with hardened and adult prisoners.

h. The Court has flatly refused to inform the petitioners of the specific charges or acts that they have supposed to have committed under the terms of the injunction, even though the said injunction has eight (8) compound, complex provisions therein.

i. That the conviction has taken place and other convictions will take place although there is no showing that the petitioners herein were with notice of the provisions.

j. That if there be any violations of the injunctions the elected officials of the City have caused the petitioners to commit those violations by failing to give notice to those engaged in the peaceful protest.

k. That your petitioners are poor Negroes without funds with which to conduct a defense in the State Court. That there is needed both court reporters, and transcripts and that under the prevailing state law these petitioners, even though paupers, cannot have the assistance of the State in securing their neces-

sities to the protection of their rights because paupers in misdemeanors are not entitled to pauper appeal.

l. That the petitioners range in ages from 15 years of age to 55 years of age.

m. Counsel for the petitioners are being intimidated by the Commonwealth in open court who admits he is trying to bring charges of unethical conduct charges against the petitioners counsel and the Court does nothing to prevent the action in open court by the said Commonwealth Attorney.

n. That the Courtroom is dominated by scores of armed Officers who searched all Negro Attorneys, witnesses, or court reporters while ignoring white persons who enter. That this is humiliating to the Negro women.

o. That the court has refused to grant to the petitioners their right to a trial by a jury of their peers, while at the same time denying the right to a public trial.

p. That the court has indicated that the ordinary rules of evidence are inapplicable in these contempt proceedings.

q. That the court read a printed summation of the denial of all bail pending appeal which had been prepared before the presentation of all the evidence.

r. That although racial protest against segregation is involved the Court has denied and intends to deny defense counsel the right to present evidence of the subject matter of the protest.

s. That the Court is putting the petitioners on trial on the unsworn representations of diverse persons unknown to the petitioners.

t. That the court is forcing the 105 persons charged under these proceedings to appear daily with their Attorney without

any notice of who is being tried next. This procedure tends to deny the right to counsel and forces further poverty on those persons with jobs.

8. That, in particular, defendants are being prosecuted for demonstrating upon the streets of Danville, Virginia, in protest against certain laws, practices and customs seeking to perpetuate the practice of segregation of the races, and for engaging in other lawful forms of peaceful protests against such laws, practices and customs.

9. That no bond with good and sufficient surety is required to be filed herewith since this proceeding to punish for contempt is criminal in nature.

WHEREFORE, petitioners file this petition for the removal of said proceedings from the Corporation Court of the City of Danville, Virginia, to the United States District Court for the Western District of Virginia and pray that said proceeding stand so removed

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

	No. 9080	
BAINES, et al.,	Appellants	:
	v.	
CITY OF DANVILLE, VIRGINIA,	Appellee	:
	No. 9081	:
CHASE, et al.,	Appellants	
	v.	:
MC CAIN, et al.,	Appellees	
		:
	No. 9082	
MC GHEE, et al.,	Appellants	:
	v.	
CITY OF DANVILLE, VIRGINIA,	Appellee	:
	No. 9083	:
LEWIS, et al.,	Appellants	
	v.	:
BENNETT, et al.,	Appellees	
		:
	No. 9084	
CHASE, et al.,	Appellants	:
	v.	
AIKEN, et al.,	Appellees	:

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STATEMENT OF CASES

I. Baines et al v. City of Danville (No. 9080): This is an appeal from an order remanding to the Corporation Court of Danville thirty-four cases that had previously been removed to the United States District Court for the Western District of Virginia pursuant to 28 U.S.C. 1443. There is also before the Court a petition for a writ of mandamus to the District Court to hear and decide the removed cases.

II. Chase et al v. McCain et al (No. 9081): This is an appeal both from the denial by the lower court of a motion by plaintiffs for temporary injunctive relief and from an order dismissing the action. This plenary action was brought in the United States District Court for the Western District of Virginia seeking a declaratory judgment and temporary and permanent injunctive relief against the operation of an anti-picketing ordinance enacted by the Danville City Council on June 14, 1963. Following a full hearing, plaintiffs' motions for a temporary restraining order and a temporary injunction were denied. Subsequent to said hearing, defendants' motion to dismiss the complaint was granted with prejudice.

III. McGhee et al v. City of Danville (No. 9082): This is an appeal from an order remanding to the Corporation Court of Danville seventy-one cases that had previously been removed to the United States District Court for the Western District of Virginia pursuant to 28 U.S.C. 1443. There is also before the Court a petition for a writ of mandamus to the District Court to hear and decide the removed cases.

IV. Lewis et al v. Bennett et al (No. 9083): This is an appeal from the denial by the lower court of a motion by plaintiffs

for temporary injunctive relief. This plenary action was brought in the United States District Court for the Western District of Virginia seeking a declaratory judgment and temporary and permanent relief against the refusal of the Virginia Employment Commission to institute or continue the payment of unemployment compensation to eligible applicants who had participated in civil rights demonstrations in the City of Danville. Following a full hearing, plaintiffs' motions for a temporary restraining order and a temporary injunction were denied.

V. Chase et al v. Aiken et al (No. 9084): This is an appeal by the lower court of a motion by plaintiffs for temporary injunctive relief and from an order dismissing the action. This plenary action was brought in the United States District Court for the Western District of Virginia seeking a declaratory judgment and temporary and permanent injunctive relief against a temporary and permanent injunction issued by the Judge of the Corporation Court of Danville on June 6, 1963. Following a full hearing, plaintiffs' motions for a temporary restraining order and temporary injunction were denied. Subsequent to said hearing, defendants' motion to dismiss the complaint was granted with prejudice.

VI. Proceedings in this Court: Notices of appeal from the above orders were duly and timely filed. Appellants thereafter moved this Court for an order granting temporary relief pending the hearing and determination of these appeals. On August 8, 1963, this Court, Chief Judge Sobeloff and Circuit Judges Haynsworth and Bell, ordered that

> "Eugene Link, Commonwealth Attorney, and T. F. Tucker, Clerk, Corporation Court, Danville, Virginia, and all persons acting in concert with them or by their authority are hereby restrained and enjoined from bringing to

> trial any person for the alleged violation of said ordinance of the City of Danville and the injunctive orders of the Corporation Court of the City of Danville until the determination of the above appeals which have been set for hearing at the term of this Court beginning on the 23rd day of September next."

A subsequent order of this Court directed that these appeals be consolidated for hearing and that they be briefed together.

STATEMENT OF FACTS

[For the convenience of the Court, references in parentheses refer to pages of the following documents:

BMT - the transcript of the hearing below on June 24, 1963 in Baines et al v. City of Danville (No. 9080) and McGhee et al v. City of Danville, (No. 9082).

BT - the transcript of the contempt trial of Ezell Barksdale held on June 17, 1963 in the Corporation Court of the City of Danville.

HA - the affidavit submitted by Len W. Holt, duly verified July 16, 1963, with the brief submitted to this Court in Nos. 9081, 9084, and 9083 on July 16, 1963.

MA - the multiple affidavits submitted to this Court on August 8, 1963.

CAT - the transcript of hearing of August 8, 1963 before this Court.

A - the Appendix to Brief.

Preliminary Statement

The primary purpose of this statement of facts is to present the factual background of the racial situation in the City of Danville, Virginia, in the spring and summer of 1963 so that this Court will reach the following conclusions:

1. The objectives of the Danville Christian Progressive Association (referred to herein as the DCPA) fall directly under the protection of the Equal Protection Clause of the Fourteenth Amendment.

2. These objectives are, in short, as follows:

   a. The desegregation of all public facilities.

   b. The desegregation of all privately-owned facilities which are open to the general public.

   c. The equalization of job opportunities in public and private employment for both white and black alike.

d. The establishment of an official bi-racial commission.

e. The appointment of Negro representatives on all boards and commissions of the City government.

(BMT 14, 126, 140-1).

3. For many years, Negro residents of Danville have attempted, without appreciable success, to obtain these wholly reasonable objectives. The officials of the City, however, have steadfastly and consistently refused even to negotiate with Negro leaders on the aforesaid objectives (BMT 14-15).

4. Because of this refusal to sit down at the conference table, Negro residents of Danville instituted peaceful demonstrations in the spring and summer of 1963. These demonstrations included boycotts, picketing, protest meetings and marches, petitions for the redress of grievances and prayer vigils. In every instance, these demonstrations, insofar as their participants were concerned, were peaceful and non-violent. In fact, not a single charge of violent conduct has ever been made against any member or supporter of the DCPA (BMT 174). Moreover, the only violence that has occurred was instigated and actively assisted by the police of the City of Danville who are solely responsible for it. The only persons injured as a result of the demonstrations were members of the DCPA, many of whom were hospitalized with serious wounds. On the night of June 10, for example, forty-eight out of fifty demonstrators who were conducting a peaceful prayer vigil in front of the City Jail were sent to the hospital by police action alone. These demonstrators, who included men, women and children, were kneeling in the alley between the Municipal Building and the jail, where they were being led in prayer by one of their ministers. After arresting the latter, the police first knocked everyone to the ground with highpowered firehoses

and then proceeded to beat them unmercifully with nightsticks (BMT 71-72).

5. Despite the fact that the demonstrators were peaceful and orderly, the Judge of the Corporation Court of the City of Danville, Hon. Archibald M. Aiken, on June 6, 1963, without notice issued a far-reaching temporary injunction against them and, on August 2, 1963, enlarged it beyond its original scope and made it permanent. At this moment, it is virtually impossible for the Negro residents of Danville to engage in any organized or unorganized protest without subjecting themselves to imprisonment, presumably without bail, and heavy fines.

In addition, the Danville City Council, on June 14, 1963, enacted an ordinance which, in effect, codified the restrictions of the injunction and, as a practical matter, completely nullified the right to picket. Moreover, on July , 1963, an anti-parade ordinance, which limited parading in the City to school and military groups, was passed, making the anti-protest mechanism virtually air-tight. There was absolutely no factual basis for any of these steps and, of course, no clear and present danger of any serious substantive evil.

6. Therefore, at the present time, because of the deterrent effect of the aforementioned injunction and ordinances, the exercise of vital constitutional rights, protected by the First Amendment and others, is being seriously and extensively curtailed in the City of Danville.

The Facts

Danville is a city of some 50,000 inhabitants, approximately one-third of whom are Negro. The City is located on the Dan River about ten miles north of the North Carolina border in the south-

west portion of Virginia. The City's largest industry is the Dan River Mills which employs some 12,000 people. In addition, there are many tobacco processing plants in the area as well as plants of the Corning Glass Works and the H. K. Porter Disston Company. The City, which was the last capital of the Confederacy, operates under the city manager system, and is governed by a mayor and a nine-member council.

Until four years ago, Danville was completely segregated. However, as a result of student sit-ins at the tax-supported public library (which building, incidentally, was the last capitol of the Confederacy), it was closed to the public. It took a federal court suit to open it on a stand-up integrated basis. Gradually, however, the chairs and tables, which were removed after the successful conclusion of the federal suit, have been returned to the building. Shortly after the conclusion of the library suit, the public park was desegregated.

Subsequent sit-in demonstrations succeeded in desegregating lunch counters in the five-and-ten-cent stores and in the largest chain drugstore. However, at this moment, all hotels, motels, restaurants, motion picture theatres, hospitals, golf courses, bowling alleys, public playground recreational facilities, government housing projects, drive-in theatres, most churches and almost all public schools (eleven Negro children are expected to attend previously all-white schools this fall*) are segregated. Furthermore, the segregation pattern holds true insofar as all public functions are concerned at the all-white Stratford Junior College and Averitt College, the two local institutions of higher learning.

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* The children were assigned by the Virginia Pupil Placement Board.

In short, almost all daily life in Danville is on a firmly segregated basis.

For more than thirty years, Danville's Negroes have attempted to lift some of these color bars. They resorted to conferences with City officials and petitions to the City Council, as well as specific and omnibus federal actions. Outside of the lawsuits, which have been alluded to earlier, and a conference in 1962 between the City Manager, the head of the Social Service Bureau and the present Negro leaders on welfare which resulted in the hiring of a Negro social worker for Negro problems, no progress in ending or alleviating segregation has taken place (BMT 14-15).

In April or May of 1963, the Danville branch of the NAACP presented a petition to the City Council asking for the enactment of a compulsory school attendance ordinance. This petition was referred to the school board for study and, presumably, it is still being studied as no action on this score has been taken. For almost a year prior to this, both the NAACP and the DCPA presented various petitions to the City Council, all of which dealt with aspects of segregation in Danville (BMT 15). None of these petitions were ever acted upon and, in fact, the Council, by the passage of a restrictive ordinance, made it almost impossible for Negro leaders to get on the agenda of its meetings by requiring the submission in advance of detailed requests in writing for permission to address it.

On May 31, 1963, the first protest march, with a permit from the mayor, was held (BMT 25). It was peaceful and orderly and no arrests were made. Subsequent marches, all of which were to the steps of the Municipal Building, were conducted up to June 5 when the first arrests were made during a sit-in at the City Manager's

office (BMT 26). After leaving the City Manager's office, those demonstrators who had not been arrested previously marched up Main Street to Chestnut Street where Judge Aiken attempted to disperse the meeting. As he testified in Nos. 9080 and 9082 below, he ordered Reverend Lawrence G. Campbell, one of the Negro leaders, to "disperse the meeting and break up the crowd." When Campbell refused to do so, the judge told Police Chief Eugene McCain, "I thought the thing to do was to arrest the leaders there and I believed the children would break up and go on away." (BMT 126) Five leaders were immediately arrested and charged with riotous and disorderly conduct in a public place and contributing to the delinquency of minors.

Although the demonstrations had started on May 31, not a word about them appeared in the Danville Register (morning) or the Danville Bee (evening), the City's two dailies which are owned by the same company. The first mention of the Negro protest movement occurred on June 6 when the arrests of the leaders of the June 5 march were proclaimed. On that day, the Bee editorialized that Danville would resist direct action protest movements because "it has too many peaceful-minded Negroes in the upper age brackets to see that the record of racial homogeneity shall not be broken down, even if the lawless elements are fortified in their action by the support of the federal courts and the Kennedy Administration which now seeks to achieve its ends by new and sharper teeth in civil rights legislation."

At 2 p.m. on June 6, at the instigation of Councilman Charles R. Womack, a two-and-a-half-hour conference in the conference room at the Municipal Building was held by the mayor (BMT 16-20). Attended by Negro and white representatives, the conference resulted in some limited understanding and an agreement to meet again the

next day. However, at the conclusion of this meeting, the City Attorney announced that Judge Aiken had issued a temporary injunction and that the Negro leaders would undoubtedly be served shortly (BMT 17) (BT 32-34). In addition, he disclosed that a special grand jury of the Corporation Court was meeting at that very moment to investigate "any given condition or conditions". This grand jury had also been instructed to inquire into the applicability of a State statute which made it a felony punishable by five to ten years in the penitentiary to incite Negroes to riot against the whites and vice versa (BMT 21).

On June 7, when the meeting between the Negroes and whites resumed in the conference room of the Municipal Building, the grand jury on the floor above was busy indicting three of the Negro leaders who were then attending the meeting. The next day, the latter surrendered and were under $5,000.00 bail. Also on June 7, Councilman Womack, who had been instrumental in bringing about the negotiation meetings of June 6 and June 7 was threatened by a censure resolution introduced by Councilman John W. Carter. According to Carter, Womack had attempted to set up a bi-racial commission despite Judge Aiken's injunction. The resolution was not passed.

After the attempted censure of Womack, the bi-racial negotiating group never met again and demonstrations were resumed by the DCPA. On the night of June 10, some 48 out of 50 Negro demonstrators, who were praying in the alley between the City Jail and the Municipal Building, were savagely and brutally attacked by Chief McCain and his officers (BMT 99, 195-196). While the demonstrators were on their knees being led in prayer by a minister, the mayor, as quoted in the Register of June 11, ordered McCain to "give them all you've got". As the minister was being led away

to jail, high pressure firehoses were trained on his kneeling followers, all of whom were smashed to the pavement and then viciously beaten by police. As the next morning's Register put it, "several sought refuge from the flailing nightsticks by crawling under the cars; others ran and fell into the parking lot but were promptly dragged into the street by policemen and sent running down the street with still more licks from the night-sticks."

The result: broken heads, fractured noses, fractured wrists, contusions, bruises, lacerations, and, in some instances, lasting injury to sight and hearing (BMT 74). It took the night-long efforts of three doctors and a number of nurses to treat the wounded at the all-Negro Winslow Hospital (BMT 198). It was not until early morning that the last of the injured received treatment. Of the four dozen who were injured that night, only one was arrested by the police. The latter was charged with resisting arrest because he had sought refuge from the night-sticks by crawling under a parked car.

Chief McCain, testifying in No. 9080 below, stated that, although it was the duty of his policemen to report to him if any people were injured by police officers in the line of duty, he conceded that he had received no such reports after the June 10 assault. But he did admit that he had received "a report from the City Manager's office that 12 people were treated at Winslow Hospital for various injuries." (BMT 189)

> "Q. Did you check the report at Winslow Hospital yourself?
>
> A. I did not." (BMT 189)

On June 11, the Chief was reported by the Greensboro Daily News as saying: "Speaking of last night's violence, [McCain]

said the men were tired and their nerves were on edge. They were not acting in their best capacities, he said."

The next morning, thirty state troopers moved into Danville and promptly joined forces with the police in harassing and arresting demonstrators. On June 12, the mayor announced that he would name an advisory committee, composed of three prominent white citizens, to counsel him on racial problems and that he would seek to negotiate with Negro spokesmen but provided that they did not include any of the DCPA leaders who were under indictment or had been charged with any offenses.

On June 14, the City Council adopted a stringent anti-picketing ordinance which, in addition to codifying Judge Aiken's injunction, made effective picketing impossible. According to the Danville Bee for that day, it was a "'Get Tough' Law." On that same day, the mayor conferred with several Negro leaders and their attorney in his office, following which conference Len W. Holt, one of the lawyers representing some of the demonstrators, was arrested just as he came out of the mayor's office and charged with being in contempt of the injunction (BMT 183).

By the end of the day, at least sixty people had been arrested on mimeographed capias forms and charged with violating the injunction (BT 106). By the morning of June 17, when the first trials on the contempt charges began in the Corporation Court, this number had swelled to 105. The first defendant tried was Ezell Barksdale. However, before trial began at 2:30 p.m., Mr. Barksdale's case as well as those of some thirty-three other defendants had been removed to the United States District Court for the Western District of Virginia by a petition in proper form filed pursuant to 28 U.S.C. 1443. Despite the filing of this petition, Judge Aiken insisted on trying the case (BT 8-9). When

asked to at least read 28 U.S.C. 1443, the judge remarked that it was not necessary (BT 115-116).

The Barksdale trial was conducted in an atmosphere of tension generated solely by the State (BMT 107-119). Not only was the courtroom, from which the general public was excluded (BT 5), ringed with at least forty armed state troopers, city policemen and sheriff's deputies (BT 35-36) but Judge Aiken was escorted into the Municipal Building by armed bodyguards (BMT 49-51). The judge himself was armed as he himself admitted below. "I didn't wear any revolver on the bench, Mr. Carter," he stated. "I wore it in a holster going home at night and coming to work in the morning." (BMT 128) Despite the fact that he further admitted that he had never received any direct threats (BMT 129) he said that he wore it for "protection". Further, lawyers for the defendants were searched in court and their photographs taken by policemen stationed outside of the Municipal Building (BMT 46-47).

During the Barksdale trial, Judge Aiken refused to permit the defense to raise or litigate any constitutional questions (BT 21-22). In addition, he refused to permit one of the defense's lawyers to participate in the trial (BT 4) and cut off pertinent cross-examination by defense counsel (BT 72, 82). At its conclusion, Judge Aiken read his opinion from two typewritten pages which he later admitted had been prepared in advance of the trial. "I don't know just when I wrote it," he stated below. "I wrote it after considerable study because I thought that a question like that might come up and I gave it careful study."

"Q. Was it before the trials?

A. Yes." (BMT 144)

The defendant was sentenced to ninety days in jail without bail, with forty-five days suspended, and a fine of $25.00, and was

sent immediately to the County Farm. According to Judge Aiken, the granting of bail "would result in an almost complete disruption of any effectiveness or any deterring effect of the injunction, and rendering it almost meaningless." (BT 118)

At this point, it might be indicated that all 105 defendants had been ordered to be in court at ten that morning and to remain there until dismissed. On June 20, Judge Aiken stated that he would require all defendants to be in court with their lawyers every day until all trials were finished. As the Register of June 21 put it, "A 'day in court' that could extend into weeks has been assured the multitude of defendants still awaiting trial on contempt charges arising from Judge A. M. Aiken's injunction against disorderly demonstrations." By this time, the names of 138 defendants appeared on the docket and petitions for the removal of 105 of them had been properly filed with the United States District Court.

On June 22, ten more persons were indicted by the Corporation Court grand jury for inciting the Negroes to riot against the whites. One of the seven Negroes and three whites so indicted was Len W. Holt, a defense attorney. The new defendants were subsequently released under $5,000.00 bail. Three other defendants were arrested by police who invaded the High Street Baptist Church and forced open the door of an upstairs sanctuary to apprehend them.

With the conviction of Barksdale and Ernest Howard Smith, another removed defendant who was tried and sentenced one day after Barksdale's trial (Smith was given 120 days in jail, with sixty days suspended, and a $50.00 fine), defense counsel applied to United States District Judge Thomas J. Michie for relief. The City countered by moving to remand the removed cases pursuant to

28 U.S.C. 1446. After a hearing on June 24 and 25, Judge Michie ordered the release of both Barksdale and Smith on writs of habeas corpus and admitted both defendants to bail.

After liberating Barksdale and Smith, Judge Michie stated that he would not give an immediate decision on the City's motion to remand the cases which had been removed to the federal court, giving attorneys for both sides until Monday, July 1, to submit additional briefs.

Judge Michie also heard testimony in another federal action questioning the constitutionality of the anti-picketing ordinance (No. 9081). At the same time, a federal suit seeking to enjoin the cutting off by the Virginia Employment Commission of unemployment benefits to demonstrators was filed with the clerk of the United States District Court for the Western District of Virginia. This action is pending in this Court as No. 9083.

As has been previously stated, the defendants charged with violating the Corporation Court injunction, together with their lawyers, were regularly appearing in that court and being forced to sit most of the day in a trial-free courtroom. For example, while proceedings were taking place in federal court on June 25, most of the 138 defendants sat it out for more than two hours in Corporation Court. According to the Danville Bee for that day, "the wait started after the names of 138 defendants had been called - 105 of them charged with violations [of the temporary injunction] prior to June 19 and 33 others charged on June 19."

After the federal court hearing, the DCPA planned a mass protest meeting against segregation to be held at Peters Park for which an application for a permit had been made. DCPA leaders were told that no permit would be issued because the park was not in a safe condition. A request for a parade permit was

also denied, the reason given being that attorneys for the City of Danville were at that very moment seeking to obtain a federal injunction to bar "further conspiracy to deprive the citizens of Danville of equal protection, privileges and immunities of law." Judge Michie granted a temporary restraining order the next day -- July 2 -- and set a hearing thereon for July 9.

On July 2, the Department of Justice submitted an amicus curiae brief in the United States District Court for the Western District of Virginia in support of the defense's opposition to the City's motion to remand the removed cases back to the Corporation Court. In addition to other grounds, the Department's brief indicated that it would be impossible for defendants charged with violating the injunction to get a fair trial in that court because, among other things, Judge Aiken wore a gun and determined defendants' guilt long in advance of their trials.

On July 5, 1963, Mrs. Shirley Thomas, a nineteenyear-old Danville mother, brought suit in the United States District Court for the Western District of Virginia against Chief McCain. Mrs. Thomas who, on June 24, 1963, had testified before Judge Michie that she had been brutally beaten by an unidentified Danville policeman and Chief McCain himself (BMT 195-6), and had suffered a broken nose during the June 10 assault in the parking lot between the jail and the Municipal Building (BMT 195).

On July 8, 1963, the mayor, who had steadfastly refused to meet with DCPA leaders because they were what he termed "law-breakers", did confer with thirteen Negroes, none of whom was identified as being associated with the DCPA. The result of the conference was an announcement by the mayor that there were three police jobs open which could be filled by Negroes provided that they met the necessary qualifications. At this juncture, it might

be pointed out that at least one Negro college graduate who applied for a police job was rejected on the ground of poor English.

On July 9, a hearing before Judge Michie on the dissolution of his temporary restraining order took place in Danville (HA 17). After the hearing, Judge Michie indicated that he would not rule on the defense's motion to dissolve the restraining order until the end of the week. At the same time, he announced that a decision on the removed cases would be handed down by the next Tuesday. At the same time, it was pointed out to Judge Michie that the defendants involved in the removal cases were still being forced by Judge Aiken to report for roll call in the latter court every few days (HA 16).

On July 10 a defense attorney appeared before Chief Judge Simon E. Sobeloff of the United States Court of Appeals for the Fourth Circuit in Baltimore, Md. and asked that Judge Michie's temporary restraining order be dissolved. After a telephonic discussion with Judge Sobeloff, Judge Michie agreed to dissolve the temporary restraining order but, at the same time, announced that he was remanding the removed cases back to the Corporation Court.

With the appearance of Dr. Martin Luther King, Jr. in Danville on July 11, mass arrests began again. Before the day ended, some sixty demonstrators had been arrested for making protest marches to the Municipal Building. They were charged with violating both the injunction and the anti-picketing ordinances (HA 17). On that same day, Chief Judge Sobeloff agreed to hear argument in Baltimore on July 16 on Judge Michie's remand order as well as applications for temporary injunctions against the enforcement of the injunction and the anti-picketing ordinance.

On July 12, eight more Negroes were arrested for picketing

downtown department stores and charged with trespassing on private property and violating State picketing laws and the injunction. On the same day, six were arrested for picketing at the Dan River Mills and were arrested on the same charges (HA 18). One DCPA leader, who had driven the pickets to the mill, was arrested and charged with inducing minors to commit a misdemeanor. During the evening, ten persons were arrested for making a protest march to the Municipal Building and were charged with violating both the injunction and the anti-picketing ordinance. This made a total of ninety-one arrests for the two days of July 11 and July 12.

Fourteen were arrested on July 13 for picketing at downtown stores. The following evening six persons were arrested for picketing in front of the mayor's house. One of those arrested was Private First Class Buford Holt, a soldier on furlough from Fort Bragg, N.C. All were arrested on three charges -- violation of the injunction, the anti-demonstrating ordinance and the statute against parading without a permit. In addition, Private Holt, who sat down on the sidewalk when police approached, was also charged with resisting arrest.

The first hearing before this Court occurred in Baltimore, Md. on July 16, 1963. Before the hearing took place, the DCPA announced that no more demonstrations would occur until this Court had ruled. On the day of the hearing, thirteen white Danville ministers asked the mayor to enlarge his advisory committee to include Negroes. One of the ministers, Dr. Cecil Robert Taylor of the Disciples of Christ, was asked to resign by his congregation immediately after the request became public.

Following the hearing in Baltimore, counsel for all parties were informed that this Court would take no action at that time.

"The court has decided to pass no order at this time," Clerk Richard M. F. Williams wrote to all counsel on July 22, "but the various appeals already taken or which may be taken will be heard during the special term of the court which begins September 23..."

Up to July 16, the date of the Baltimore hearing, 234 persons were under arrest for violating the injunction (MA 1). On July 18, the Virginia Employment Commission declared eleven more demonstrators ineligible for unemployment compensation (MA 1). Two days later, six pickets appeared downtown and were arrested and charged with nineteen different violations (MA 2). Because their charges fell under the jurisdiction of three different courts, bonds totaling $2500 for each defendant had to be posted.

When news of this Court's decision not to consider the injunction and the ordinance until September 23rd reached Danville on July 23, City officials were jubilant. The City Manager was quoted by the Register on July 25 as saying that he "couldn't believe the good news at first" and was "highly gratified." The mayor was quoted by the Richmond News on the same day as stating that the two months until September 23rd "ought to just about give us time to clean house." The City Attorney said that the City was now "free to proceed with the cases." (MA 5)

At the same time, Chief McCain warned that anyone violating the injunction would be immediately arrested and that out-of-towners would be the first to be apprehended. A battery of movie and still cameras would be used to identify participants in demonstrations for future arrest and prosecution. Those who depended for their livelihood on the tobacco processing plants were reminded by the Chief that, if they participated in demonstrations, they would probably not be able to report to work when the plants

reopened shortly (MA 2, 5).

A major demonstration was planned for Sunday, July 28. In the three days prior to the scheduled demonstration both local newspapers ran deterrent articles and pictures (MA 6-7). At 3:00 p.m. on July 28, some eighty people left High Street Baptist Church and marched single file, eight to ten feet apart, on the sidewalk in the direction of the Municipal Building. They were all arrested at the intersection of Main and Union Streets, one block from their destination. The same multiple charges that had characterized previous arrests were lodged against them.

On July 29, the hearing on whether the temporary injunction should be made permanent began before Judge Aiken (MA 7). After a week of hearings which indicated that there had been no violence on the part of any demonstrator since the issuance of the temporary injunction almost two months earlier, the injunction was not only made permanent but greatly enlarged in scope and effect (MA 7-9). The prosecution was permitted to introduce pamphlets and clippings purporting to show that the demonstrations were Communist-led-and-inspired and that many of the demonstrators had been hypnotized by agents of Moscow (MA 8).

With the exception of sporadic picketing, the issuance of the permanent injunction completely stalled the DCPA protest movement (MA J4-J7). Because of its broad terms and the evidence in the Barksdale and Smith contempt trials that Judge Aiken would not entertain applications for bail, persons sympathetic to the DCPA were completely inhibited from participating in any activity even remotely related to the protest movement. The result was an almost complete cessation of protest activity. According to an Associated Press headline on August 3, "Racial Incidents Subside in Danville."

On August 6, the first 47 contempt cases were set for hearing. Shortly after the cases were called, the Commonwealth Attorney, without notice, filed a motion for a change of venue (MA 10). The motion was promptly granted and, the following day, forty-one of the cases were transferred to five counties, the nearest of which was eighty miles away and the farthest 250 miles away (MA 10-11). On August 8, the day of a scheduled hearing before this Court on defendants' application for a stay of the contempt prosecutions, most of the remaining three hundred cases were transferred to other remote areas of Virginia (CAT). It was at this time that this Court granted the requested stay.

However, only prosecutions were stayed and not arrests for violation of either the injunction or the ordinance. As the Register headlined on August 10, "Integration Movement Truckles to Petty Annoying Phone Calls." The calls in question were stated to be made to public officials with the caller saying "freedom" and then hanging up. "Except for the annoying aspects of the calls, they apparently accomplished nothing as business went on as normal in what was generally one of the City's quietest days since demonstrations began May 31st," the Register observed.

As a result of the inhibiting influence of the permanent injunction, there were no arrests in Danville until August 14 when six pickets were arrested for picketing downtown stores and charged with the usual violations. Five days earlier, three prominent Negro ministers, influenced by Judge Sobeloff's post-hearing suggestion that "the interval between now and September 23rd may be utilized by persons of good will of both races to establish communications and to seek eventually acceptable solu-

tions to these problems out of which these cases arise," requested the mayor to arrange a meeting with the full City Council to explore areas of possible settlement of the racial problems. The mayor scheduled a meeting for August 10 but six of the nine councilmen, including John W. Carter, sent him a written statement that they would not be present at the meeting because they felt it would be "untimely."

At the time of completing this statement of facts -- August 27, 1963 -- the Negro residents of Danville have reached a dead end insofar as their attempts to exercise their constitutional rights of peaceable assembly and protest are concerned. In short, vital constitutional safeguards entitled to the highest protection have been decisively destroyed by the energetic and concerted efforts of a city government dedicated to the suppression of all peaceful protest against segregation by those most immediately affected by it. A totally repressive injunction and a set of equally repressive anti-picketing and anti-parading ordinances have effectively crippled most of the First Amendment rights of the Negroes of Danville. Nothing could be more un-American.

BRIEF STATEMENT OF QUESTIONS INVOLVED

1. The ordinance of June 14 and the state court injunctions are unconstitutional on their face and as applied as violative of the Fourteenth Amendment. See Part One of Argument.

2. The District Court had power to enjoin the enforcement of the ordinance and the state court injunctions. The District Court erred in dismissing the complaints and denying temporary relief. See Part One of Argument.

3. The denial of unemployment insurance benefits to Negro citizens arrested in demonstrations violated the Fourteenth Amendment. The District Court erred in denying the temporary relief sought. See Part Two of Argument.

4. The District Court had the power and duty to hear and decide cases duly removed pursuant to Title 28 U.S.C. 1443. Removal was proper under Subsections (1) and (2) of Title 28 U.S.C. 1443. See Part Three of Argument.

5. This Court has jurisdiction to hear and determine the appeals from the orders remanding the removed cases, or to entertain a petition for a writ of mandamus to the District Court to hear and decide the removed cases. See Part Three of Argument.

PART ONE

CHASE, et al v. AIKEN, et al No. 9084
CHASE, et al v. McCAIN, et al No. 9081

POINT ONE

THE ORDINANCE OF JUNE 14 AND THE STATE COURT INJUNCTIONS ARE UNCONSTITUTIONAL ON THEIR FACE AND AS APPLIED AS VIOLATIVE OF THE FOURTEENTH AMENDMENT.

Statement

Chase, et al v. McCain, et al, No. 9081 in this Court, is a plenary federal action grounded on the Civil Rights Act and seeks a decree enjoining the enforcement of the Ordinance of June 14 (A-15) and declaring it unconstitutional. Chase, et al v. Aiken, et al, No. 9084 in this Court, is a plenary federal action grounded on the Civil Rights Act and seeks a decree enjoining the enforcement of the state court injunctions entered in the Corporation Court of the City of Danville on June 6th and made permanent on August 2nd, and declaring them unconstitutional.

Both the ordinance and the injunctions are in a factual and legal sense completely interrelated. The injunction is virtually codified by the ordinance and the ordinance is read into the injunction as one of the "laws" of Virginia and Danville. In life the injunction and ordinance are used together as two sides of the same official response to the demonstrations of Negro citizens. Almost all persons arrested for participating in the demonstrations are charged with violation of both the injunctions and the ordinance based upon the same conduct. See STATEMENT OF FACTS, supra. The constitutional questions posed are very similar in both cases. For the convenience of the Court we propose to discuss these questions together.

It has been long established that First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. Edwards v. South Carolina, ____U.S.____, 83 S.Ct. 680; Stromberg v. California, 283 U.S. 339; DeJonge v. Oregon, 299 U.S. 353; Cantwell v. Conn., 310 U.S. 296. The ordinance and injunctions now before this Court raise no sophisticated questions of constitutional law. They have been written as if the First and Fourteenth Amendments do not exist. Every precept, every canon, every concept of constitutional law enunciated for years by the Supreme Court to enforce the precious freedoms of the First Amendment have been here ignored. These legislative and judicial enactments make no pretense at meeting constitutional standards. They are patently void on their face. Any measuring of these enactments by the standards of the First Amendment reveals their total illegality. It is necessary only briefly to restate these time-honored tests and the constitutional deficiencies become instantly apparent.

1. Any statute which is drawn so broadly as to include within its orbit constitutionally protected conduct is unconstitutional on its face. Wright v. Georgia, ____U.S.____, 83 S.Ct. 1240 (1963); Edwards v. South Carolina, ____U.S.____, 83 S.Ct. 680 (1963); Talley v. California, 362 U.S. 60; Thomas v. Collins, 323 U.S. 516; Stromberg v. California, 283 U.S. 359. It is for this reason that standards of permissible statutory vagueness are strict in the area of free expression. NAACP v. Button, ____U.S.____, 83 S.Ct. 328 (1963); Smith v. California, 361 U.S. 147; Winters v. N.Y., 333 U.S. 507; Herndon v. Lowry, 301 U.S. 242; Stromberg v. California, supra; U.S. v. C.I.O., 335

U.S. 106, 142. Thus, in appraising a statute's inhibitory effect upon the exercise of First Amendment rights all possible applications of the statute must be considered regardless of the specific record at bar. NAACP v. Button, supra; Thornhill v. Alabama, 310 U.S. 88; Winters v. N.Y., supra.

These principles are fundamental to personal liberty. As the Court recently said in NAACP v. Button, supra, "The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchallenged delegation of legislative powers, but upon the danger of tolerating in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application", at p. 338. See Marcus v. Search Warrant, 367 U.S. 717, 733. For this reason broad regulatory rules in the area of free expression are suspect, NAACP v. Button, supra; Near v. Minnesota, 283 U.S. 697; Shelton v. Tucker, 364 U.S. 479; Louisiana ex rel Gremillion v. NAACP, 366 U.S. 293, and as we have been recently reminded "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms", NAACP v. Button, supra, at p. 340. Accordingly, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. Shelton v. Tucker, 364 U.S. 479; Butler v. Michigan, 352 U.S. 380; Schneider v. State, 308 U.S. 147; Cantwell v. Conn., 310 U.S. 206; Saia v. N.Y., 334 U.S. 558; Talley v. California, supra.

A. The Ordinance Fails to Meet these Tests.

Even a cursory examination of the ordinance of June 14

(A-15) leads to the immediate conclusion that it utterly fails to meet these minimal standards of constitutionality. The main thrust of the statute is the prohibiting of peaceful picketing and assemblies. The right to peacefully picket and to assemble are classic First Amendment liberties. Cf. Thornhill v. Alabama, supra, and Hague v. CIO, 307 U.S. 496. But the ordinance here under attack enacts sweeping prohibitory regulations which catch into its dragnet activities clearly and traditionally protected by the First Amendment. These prohibitions are so vaguely drawn so as to make illegal endless forms of otherwise constitutionally protected picketing and assemblies.

Each provision of the ordinance contains prohibitions so sweeping, so broad, as to require striking the enactment as void on its face. Only a few illustrations will suffice:

(1) Section (1) reads as follows:

> "(1) All assemblies and picketing shall be peaceful and unattended by noise and boisterousness, and there shall be no shouting, clapping or singing of such a nature as to disturb the peace and tranquility of the community;"

Section (1) read literally may limit assemblies and picketing to complete silence. "Noise" is alternatively defined in Webster's Collegiate Dictionary as "sound, or a sound of any sort". Or "noise" may mean "loud". Within this range any peaceful assembly or picket line may be prohibited as illegal. Similarly "boisterous" is defined as "strong", or "massive", or "noisy and unrestrained especially in jollity". Moreover it bans "shouting", "clapping or singing. . . as to disturb the peace and tranquility of the community". To limit an assembly to silence, or to prevent them from applause, or singing of hymns, or shouting slogans for freedom, embraces nearly every practicable effective means whereby those citizens concerned with the rights

of Negroes may enlighten the public as to the nature of their grievances and the virtues of their cause. Literally read, it proscribes singing in church if a passing policeman feels that the neighboring citizenry is upset.

Some segments of the Danville community may have a rather low threshold of "tranquility" in the face of Negroes singing freedom songs.

It may be that "shouting" approval of a resolution condemning segregation in public facilities in Danville, or "clapping" at an integration speech, which after all is "striking the hands together, as an expression of applause, encouragement" [Webster's Collegiate Dictionary], or "singing" "We shall overcome" the now universally recognized anthem of the new Negro freedom movement, might well disturb the "tranquility" of the community. "Tranquility", after all, we are told, is a state of "quiet, calm; undisturbed; not agitated". [Webster's Collegiate Dictionary] What is the purpose of freedom of speech, of freedom of assembly if it is not to "disturb", to "agitate"? We are told again and again that these are the highest aims of the First Amendment rights. Cf. Terminiello v. Chicago, 337 U.S. 1. Segregationist communities are "disturbed" and "agitated" by demands that they obey the mandate of the Constitution. Is it conceivable that the exercise of the rights of assembly and speech which have these results can be punished?

In short this statute requires that the exercise of the right to speech and assembly "must then conform to what the conscientious policeman regards the community's threshold of intolerance to be", Nesmith v. Alford, 318 F.2d 110 (CA 5, May 30, 1963). And as Judge Brown then warned for the Court, "When that day comes, freedom of the press, freedom of speech, freedom

of religion will all be imperiled", Nesmith, supra.

(ii) The anti-picketing clauses, sections (2) through (6), contain sweeping restrictions upon the right to peacefully picket. As in Thornhill, supra, "the vague contours of the term 'picketing' are nowhere delineated". The limitations are broad and utterly unrelated to any supposed legitimate objective. Cf. Shelton v. Tucker, supra. For example the limitation of pickets to six is totally arbitrary. If peaceful picketing is constitutionally protected, cf. Thornhill, supra, can the City say that all picketing by the seventh or eighth picket is per se such a substantive evil as to permit the restriction upon a First Amendment right? Merely to put the question is to reveal the crude invasion upon elementary liberties. The other limitations upon the right to picket are equally arbitrary and equally violative of the First Amendment. Can it be said that all picketing nine feet apart, or after business hours, or on weekends, or within a public building, or by a person under eighteen is per se such a serious substantive evil as to permit an infringement of the First Amendment rights involved? Such a conclusion is palpably absurd. The prohibitions obviously sweep into their ambit countless activities which do not create a serious substantive evil of such a magnitude as to permit the invasion of the constitutional right. It is basic that "only the gravest abuses, endangering paramount interests, give occasion for permissible limitation", Thomas v. Collins, 323 U.S. 516; Sherbert v. Verner, ____U.S.____, 83 S.Ct. 1790. The prohibitions against picketing are so broad as to include a myriad of constitutionally protected activities. The ordinance must fall under the rule of Thornhill v. Alabama; NAACP v. Button; Smith v. California; Winters v. N.Y.; Stromberg v. California, all supra.

See also AFL v. Swing, 312 U.S. 321; Chauffeur's Union v. Newell, 356 U.S. 341.

(iii) The same sweepingly broad prohibitions apply to "demonstrating". This is particularly shocking. "To demonstrate" is defined inter alia by Webster's as "to point out. . . to prove by reasoning . . . to establish as true . . . to explain, or illustrate . . . to show or prove publicly". A "demonstration" is "an outward expression or display . . . a public showing". The prohibitions upon the right to "demonstrate" are nothing more than naked infringements upon the exercise of "basic constitutional rights in their most pristine and classic form", Edwards v. South Carolina, supra. And unlike Edwards, here there is not even a seemingly sophisticated attempt to mask the infringement with the label of "breach of peace". Cf. NAACP v. Button, supra. Is it even arguable that a citizen under eighteen may not under any circumstances exercise the constitutional right to publicly "reason" or "establish as true" a belief? Or that American citizens may never constitutionally publicly "explain" or "prove" the validity of positions held on weekends, or after business hours? These prohibitions have no conceivable validity and must fall under the plain words of the Amendment. Hague v. CIO; Edwards v. South Carolina; NAACP v. Button; and the cases cited supra.

The right to demonstrate is a fundamental and inalienable right encompassed in the First Amendment. On Wednesday August 28, 1963 the President of the United States hailed the demonstration of two hundred thousand Americans in the Nation's capital as an exercise of fundamental constitutional rights. The right of one seventeen year old American to "demonstrate" in Danville, Virginia is no less constitutionally protected than the right of two hundred

thousand in Washington, or the two hundred Negro students in Columbia, South Carolina. See Edwards v. South Carolina, supra. The Constitution does not read "We the people of the United States with the exception of Danville, Virginia".

B. The Injunctions Fail to Meet these Tests.

The temporary injunction (A-32) and the decree as made permanent (A-37) have the same fatal vices as the ordinance and equally fail to meet the constitutional tests we have discussed above. In major degree the ordinance codified the temporary injunction.

On June 6, 1963, the state court judge, after an ex parte hearing, issued a temporary injunction (A-32) and restraining order against eight named defendants, "their servants, agents and employees, their attorneys and all other persons acting in concert therewith." This temporary injunction and restraining order by its terms was to remain in effect from June 6 to July 6 and was extended until August 2 when it was made permanent (A-37).

It enjoined and restrained among other things, "unlawfully assembling in an unauthorized manner on the public streets..."; "unlawfully using loud and boisterous language interrupting the peace and repose of the citizens of the community..."; "creating and maintaining a public nuisance by reason of unlawful and unauthorized gatherings and loud, boisterous and concerted demonstrations interfering with the peace and quiet and enjoyment of the citizens of the City of Danville." The reach of this order and the threat of contempt proceedings was implemented on June 14, 1963 by "an ordinance limiting picketing and demonstrations..." This was supplemented shortly thereafter with a "parade" ordinance which required those who sought to demonstrate to apply for a

permit at least 30 days in advance. Breaches of either of these new ordinances could thus be subject to punishment for contempt under the injunction. Finally on August 2, 1963, when the injunction was made permanent, it was enlarged to include additional clauses which further expanded its sweep.

The additional clauses now enjoin the named defendants and all those "similarly situated". This extraordinary language is identical with the language used in class actions. Apparently the City now considers the injunction as binding on everyone contemplating some support for the local Negro rights movement in Danville, in fact upon all the Negro citizens of Danville and all their white supporters.

A person might be "similarly situated" if he is "participating in, financing, sponsoring, encouraging, or engaging in meetings or other activities". Such a person might be "participating" by attending a church meeting where a demonstration is planned; he may be "financing" by posting bail for an arrested demonstrator. There is no need to elaborate further. The plain reading of the added paragraphs would proscribe a range of activities embracing every conceivable practicable or effective means of demonstrating, or assembling or speaking for Negro rights in Danville.

A line by line analysis of the temporary and permanent injunctions would reveal precisely the same constitutional faults which render the ordinance void on its face. See "A" supra. Such prases as "marching and congregating in such a manner as to impede the normal flow of either vehicular or pedestrian traffic", "unnecessarily loud, objectionable, offensive and insulting noises . . . designed to upset the peace and tranquility of the community", "unlawful assemblies" which "unreasonably disturb or alarm

the public", "participating in, financing, sponsoring, encouraging, or engaging in meetings or other activities whereby the violation of the laws of . . . Virginia . . . Danville . . . or the terms of this injunction order are suggested, advocated or encouraged . . ." are examples of the sweeping breadth of the prohibitions rendering the decrees void under the First Amendment. See cases cited in "A" supra.*

The final prohibition is a striking example of the incredible sweep of the injunction. A citizen has the absolute right to violate a command of the state or an officer of the state if the command "is itself violative of the Constitution" and "one cannot be punished for failing to obey the command". Wright v. Georgia, _____U.S._____, 83 S.Ct. 1240 (May 20, 1963). Yet this injunction would require the punishment of a citizen who fails to obey or encourages another to fail to obey a provision of a statute which itself is wholly violative of the Constitution.

The injunction must fall for the reasons the ordinance must fall. The injunction here in addition is a classic form of prior restraint and as such is suspect. Any system of prior restraints of First Amendment rights bears a heavy presumption against its constitutional validity. Bantam Books v. Sullivan, _____U.S._____, 83 S.Ct. 631; Near v. Minnesota, 283 U.S. 697; Lowell v. Griffin, 303 U.S. 444; Niemotko v. Maryland, 340 U.S. 268.

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* Injunction decrees are of course state action for the purpose of the commands of the First and Fourteenth Amendments and subject to the same restrictions as statutes. They are equally a "command" of the state. Lombard v. Louisiana, _____U.S._____, 83 S.Ct. 1122 (May 20, 1963); Shelley v. Kraemer, 334 U.S. 1; Congress of Racial Equality v. Douglas, 318 F.2d 95 (CA 5, 1963).

A recent decision of the Court of Appeals for the Fifth Circuit is directly dispositive. In Congress of Racial Equality v. Douglas, 318 F.2d 95 (CA 5, May 15, 1963) the Court considered the constitutionality under the First and Fourteenth Amendments of an injunction obtained against CORE prohibiting certain activities allegedly for the purpose of "fomenting violence or provoking breaches of the peace". The decree challenged was far less sweeping than the decree here. Yet the Court in an opinion by Chief Judge Tuttle struck down the injunction before it as violative of the First and Fourteenth Amendments. Judge Tuttle held for the Court:

> "The posture of this case in particular is even more favorable to the defendants than was the Edwards case to the defendants therein, in that an injunction is involved here which prohibits the exercise of constitutionally guaranteed rights. It is a prior restraint. As the Court said in Kunz v. N.Y., 340 U.S. 290, 295, 71 S.Ct. 312, 315, 'We are here concerned with suppression' -- and so are we here in this case. Although the protection against previous restraints on the liberties guaranteed by the First Amendment is not unlimited, it takes on an even more guarded protection than punishment after the exercise thereof. See Near v. Minn., 283 U.S. 697, 51 S.Ct. 675; Kunz v. N.Y., supra; Hague v. CIO, 307 U.S. 496; Cantwell v. Conn., 310 U.S. 796, 60 S.Ct. 900. We find that the injunction below is an unconstitutional abridgement of the First Amendment rights, as protected by the Fourteenth Amendment, as a prior restraint on the freedom of speech."

Under the holding in CORE v. Douglas, supra, and the cases cited in "A" supra, the state court injunctions are patently void as violative of the First and Fourteenth Amendments.*

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* The injunction is also violative of due process of law. The Supreme Court has long recognized the basic unfairness of a sweeping injunctive decree. Thus, in New Haven Railroad v. ICC, 200 U.S. 361, the Court struck down an injunction against violation of a whole statute after a finding of a violation of one section. The Court went on to describe injunctions of such a general character as "violative of the most elementary principles of due process." See Communications Workers of America AFL-CIO and Local 4372 v. NLRB, 362 U.S. 479.

2. The ordinance and the injunctions are void as violative of due process of law. A generally worded statute which can be construed to punish conduct which cannot be constitutionally punished is violative of due process of law in that it fails to give adequate warning of the boundary between the constitutionally permissible and the constitutionally impermissible applications of the statute. Wright v. Georgia, _____U.S._____, 83 S. Ct., 1240 (May 20, 1963). See also Winters v. N. Y.; Stromberg v. California, both supra. See also Cole v. Arkansas, 333 U.S. 196. This reflects the general rule that no one may be required at the peril of his liberty to speculate as to the meaning of penal statutes. Lanzetta v. N.J., 306 U.S. 451; Connally v. General Construction Co., 269 U.S. 385; U.S. v. Cohn Grocery Co., 255 U.S. 81.

3. Furthermore, as the Supreme Court has recently reminded us, even if the City has a legitimate concern in maintaining "peace and order" it would be "plainly incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights", Sherbert v. Verner, _____U.S._____, 83 S.Ct., 1790 (June 17, 1963). See also Shelton v. Tucker; Talley v. California; Schneider v. State; Martin v. Struthers; all supra.

The words of the Supreme Court in Kunz v. N.Y., supra, are particularly in point:

> "There are appropriate public remedies to protect the peace and order of the community if appellant's speeches should result in disorder or violence. In the present case, we have no occasion to inquire as to the permissible scope of subsequent punishment. Near v. Minnesota, 283 US 697. We do not express any opinion on the propriety of punitive remedies which the . . . authorities may utilize. We are here concerned with suppression - not punishment."

In addition to the standard criminal statutes available to

every state there are already more than adequate "appropriate public remedies" to protect the peace and order of Danville. For example, the Virginia Code makes unlawful:

(1) cursing or abusing a person or using language reasonably calculated to provoke a breach of the peace. 18.1-255

(2) Carrying a concealed weapon. 18.1-269

(3) Attempting to intimidate or impede a peace officer. 18.1-310.

(4) Behaving in a riotous or disorderly manner in any street, highway, public building or in a public conveyance. 18.1-254

There are clearly ample criminal statutes available to meet any real problem. We can only here conclude that as in Kunz, what "we are here concerned with [is] suppression -- not punishment".

4. The fundamental evil which flows from statutes such as those now before the Court is that in purpose and in fact these sweeping regulations of First Amendment liberties have the direct effect of deterring citizens from exercising these rights. Only recently the Supreme Court warned again that "These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." NAACP v. Button, supra, at p. 338.

In this same spirit Chief Judge Tuttle in CORE v. Douglas, supra, pointed out in words directly applicable here that:

> "The injunction if allowed to stand, would amount to a complete deterrent to the members of CORE to demonstrate peacefully against the segregation policies of the City of McComb. CORE and other organizations,

> organized for the purpose of peacefully demonstrating and speaking against unconstitutional state and local laws enforcing segregation would then find themselves virtually inarticulate."

The issue before the Fifth Circuit in CORE v. Douglas is in essence identical to the question before this Court. And this Court, no more than the Fifth Circuit, can allow an injunction or ordinance to stand which would be, as it is in fact, a complete deterrent to the Negro citizens of Danville to demonstrate peacefully against the segregationist policies of the City of Danville.

5. The City has attempted to justify these sweeping invasions of First Amendment liberties by asserting that the prohibitions are in some manner required by the situation. The preamble to the June 14 ordinance concludes that the "freedoms" of "speech and assembly" are exercised in such a manner as to endanger the personal safety and property of the citizenry" (A-15). While one clause in the preamble boldly asserts that certain"groups of people" have "caused personal injuries and destruction of property" "under the pretext of picketing" (A-15-16) there is of course not a shred of evidence in the record to support such an inference and the federal courts will not be bound by any such "finding". Edwards v. South Carolina, supra, at p. 683. "But it nevertheless remains our duty in a case such as this to make an independent examination of the whole record". See also Blackburn v. Alabama, 361 U.S. 199, 205; Pennekamp v. Florida, 328 U.S. 331; Fiske v. Kansas, 274 U.S. 380; Cf. CORE v. Douglas, supra. The record here contains not a shred of evidence that any demonstrators ever "caused personal injuries" or the "destruction of property"; that any demonstrators ever "incited" or urged or even suggested any such conduct. In all the

testimony adduced before the lower court not one single even isolated episode of "violence" to person or property was ever shown to be the activity of any demonstrators. See STATEMENT OF FACTS, supra.

In reality the main position urged by the City in support of the invasions of First Amendment freedoms is the often asserted fear that the exercise of these liberties by the Negro citizens will create an atmosphere of racial tension leading to possible dangers to public peace on the part of those in the community opposed to the Fourteenth Amendment goals of equality and freedom. But this fear, even if real, misconceives the function and scope of the First Amendment.

Only recently the Supreme Court had the occasion to set forth again the outer boundaries of First Amendment protection. In Sherbert v. Verner, supra, the Court emphasized that "It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation', Thomas v. Collins, 323 U.S. 516, 530". Thus the Court has said again and again that the power of the state to restrict speech and assembly exists only where the speech and assembly results in "a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Terminello v. Chicago, 337 U.S. 1, 4; see Schenk v. U.S., 249 U.S. 47; Gitlow v. U.S., 282 U.S. 652 (dissenting opinion of Mr. Justice Holmes); De Jonge v. Oregon, supra, Bridges v. California, 314 U.S. 252; Thomas v. Collins, supra; Yates v. U.S., 354 U.S. 298.

The fear, even if real and imminent, that the concepts expressed through the exercise of speech or assembly may arouse others in opposition to unrest, anger or even violence is no justification for the repression of First Amendment rights. Thus in Terminiello, supra, the Court wrote:

> "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettled effects as it presses for acceptance of an idea."

And only recently the Supreme Court decisively rejected the concept that the exercise of First Amendment rights could be punished or prohibited out of fear that they would provoke racial disorder and unrest. In Watson v. Memphis, _____U.S._____, 83 S.Ct. 1314 (May 27, 1963) the Court put this argument totally to rest. Mr. Justice Goldberg wrote for the Court:

> "The compelling answer to this contention is that constitutional rights may not be denied simply because of hostility to their exercise."

And in Edwards v. South Carolina, supra, the state made precisely the argument which appellees have consistently advanced here. Again the Court decisively rejected the contention:

> "As in Terminiello the city has made a criminal offense so as to permit conviction of the petitioner if their speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction standing on any of those grounds may not stand."

In every recent racial case in which a state or city attempts to justify infringement of First Amendment rights in the effort to suppress the Equal Protection demands of its Negro citizens the argument is continually advanced that this repression is "urgently" required to forestall racial disorder or violence. And each time

the Supreme Court replies as it has in Edwards and Watson, supra. For example, recently in Wright v. Georgia, supra, the Court wrote:

> "[T]he possibility of disorder by others cannot justify exclusion of persons from a place if they otherwise have a constitutional right to be present. Taylor v. Louisiana 370 US 154, Garner v. Louisiana, 368 US 157, 174."

Only recently the Fifth Circuit has rejected the fear of "unrest" and even "violence" resulting from demonstrations for racial equality in a decision here directly dispositive. In CORE v. Douglas, supra, Chief Judge Tuttle wrote:

> "There was no 'clear and present danger' in the case at bar. . . The discontent and unrest of the local populace resulting from the unpopularity of racial integration or the offensiveness to them of Negroes organized in a movement to test out the segregation in the bus terminal, are no grounds to prohibit what otherwise would be a constitutionally guaranteed right and freedom, especially in the manner in which the defendants conducted themselves. 'A State may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions'. Cantwell v. Conn., 310 U.S. 296, 308."
>
> The Court went on to conclude in words here decisive:
>
> "These fundamental rights to speak, assemble, seek redress of grievances and demonstrate peacefully in pursuance thereto cannot be abridged merely because a riot might be threatened to be staged or that the police officers are afraid that breaches of the peace will occur if these rights are exercised."

See also Nesmith v. Alford, 318 F.2d 110 (CA 5, May 30, 1963).

In CORE v. Douglas, supra, Judge Tuttle reminded that even in Edwards the state sought to justify punishment of the mass demonstration there by pleading the fear of a threat of "immediate violence" and that the Supreme Court only this Term had decisively rejected this justification. Thus Judge Tuttle writes in describing Edwards:

> "In spite of the testimony that the city officials felt that the mob had reached a 'fever pitch'

> and that the demonstrations 'tended directly to immediate violence', the Court, upon an 'independent examination of the whole record' found that the petitioners had 'peaceably expressed their grievances' and 'peaceably assembled' and that 'South Carolina [has] infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of grievances'. See also Fields v. S.C., 372 U.S. 522, 83 S.Ct. 267."

The fundamental policy considerations which underlie this entire matter are well expressed in Watson v. City of Memphis, supra. The city there sought to evade compliance with the Constitution by strongly urging that "gradual desegregation. . . is necessary to prevent interracial disturbances, violence, riots and community confusion and turmoil".

In words which are here completely determinative the Court stated this June:

> "The compelling answer to this contention is that constitutional rights may not be denied simply because of hostility to their assertion or exercise. See Wright v. State of Georgia, 372 U.S._____, 83 S.Ct. 1240; Brown v. Board of Education, 349 U.S. 294, 300, 75 S.Ct. 753, 756, 99 L.Ed. 1083. Cf. Taylor v. Louisiana, 370 U.S. 154, 82 S.Ct. 1188, 8 L.Ed. 2d 395. As declared in Cooper v. Aaron, 358 U.S. 1, 16, 78 S.Ct. 1401, 1409, 3 L.Ed.2d 5, 'law and order are not * * * to be preserved by depriving the Negro children of their constitutional rights.' This is really no more than an application of a principle enunciated much earlier in Buchanan v. Warley, 245 U.S. 60, 38 S.Ct. 16, 62 L.Ed. 149, a case dealing with a somewhat different form of state-ordained segregation -- enforced separation of Negroes and whites by neighborhood. An unanimous Court, in striking down the officially imposed pattern of racial segregation there in question, declared almost a half-century ago:
>
> > 'It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution.' 245 U.S., at 81, 38 S.Ct., at 20, 62 L.Ed. 149."

The words of the Supreme Court fifty years ago in Buchanan v. Warley and restated just this June are governing here. "Important

as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution".

The ordinance and injunction decrees now before this Court for judgment as to their validity under the Constitution of the United States are unprecedented in their disregard for the fundamental human liberties which this Court sits to enforce. By striking down these invalid state enactments this Court will reassert in Danville, Virginia the supremacy of the federal Constitution and put an end to what a prominent Virginia newspaper has only recently described as "a legal situation rapidly threatening to disgrace Virginia". Editorial, Richmond News Leader, August 12, 1963. (Exhibit B to Brief)

But in an even more immediate sense the restoration of constitutional liberties to Danville will immeasurably assist in what the Chief Judge of this Court characterized as the essence of the question. In announcing the order of this Court on August 8th staying the state court prosecutions under the ordinance and the injunction this Court reminded all that "as long as the problems exist, courts will be called upon to adjudicate disputed rights associated with them, but the basic problems themselves can be resolved only by the people concerned." It is in aid of this democratic objective that a cessation of what the Richmond News Leader characterizes as "a spectacle of trumped-up ordinances, unwarranted arrests, drumhead trials, and autocratic decrees", (Exhibit B to Brief) is most required. For as the Supreme Court has warned us all in Watson v. City of Memphis, "good will between the races . . . can best be preserved and extended by the observance and protection, not the denial, of the basic constitutional rights here asserted."

POINT TWO

THE DISTRICT COURT HAS POWER TO ENJOIN THE ENFORCEMENT OF THE ORDINANCE AND THE INJUNCTIONS.

A. Neither Title 28 U.S.C. 2283 nor the Ordinary Rules of Comity Affect the Jurisdiction of the District Court to Grant the Relief Prayed for in the Complaints.

The complaints in Chase v. McCain and Chase v. Aiken seek restraints against the enforcement of a State criminal statute and a State court injunction. A threshold question is whether Title 28 U.S.C. 2283 limits or affects in any way the power of the District Court to grant the relief prayed for. Title 28 U.S.C. 2283 provides as follows:

> "A Court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

1. Title 28 U.S.C. 2283 is not a jurisdictional statute.

Section 2283 is the 1948 revised version of Section 265 of the Judicial Code of 1911, former 28 U.S.C. 379. Both statutes relate back to Section 5 of the Judiciary Act of 1793. Revisor's Note, 28 U.S.C. 2283. See Toucey v. N. Y. Life Insurance Co., 314 U. S. 118. Section 2283 and its predecessors do not affect the jurisdiction of the federal courts. They are not jurisdictional statutes. They are merely statutory affirmations of the general principles of comity and equity.

In Smith v. Apple, 264 U.S. 274 the Supreme Court held directly:

> "It is not a jurisdictional statute. . . In short it goes merely to the question of equity in the particular bill."

See also Woodmen of the World v. O'Neill, 266 U.S. 297; First National Bank v. Village of Skoline, 173 F.2d 1; American Optometric Ass'n v. Ritholz, 101 F.2d 883; Jamerson v. Alliance Ins. Co., 97 F.2d 253; T. Smith and Son v. Williams, 275 F.2d 397.

Professor Moore has described the main impact of Section 2283 as follows:

> "Properly considered Section 2283 as a whole does not go to the jurisdiction of a federal court, but is an affirmation of the rules of comity, and hence should be read in conjunction with the judicial principles developed for our dual system of courts." Moore, Commentary on the Judicial Code, Sect. .03(49) p. 407.

See Southern California Petroleum Corp. v. Harper, 273 F.2d 715 (CA 5, 1959) in which Judge Wisdom comments, "Section 2283 is essentially a rule of comity, and the demand that a federal court interfere with state court proceedings is directed to the discretion of the Court."

Accordingly in analyzing the effect if any of Section 2283 upon any particular situation it is necessary to examine first the relevance and application of the general principles of comity to the fact pattern presented by the request for injunctive relief. Neither the cases nor the statute sanction a rigid jurisdictional approach. In every situation the question is whether the principles of comity call for the application or abstinence of federal injunctive power. Thus Professor Moore concludes his general analysis of the sweep of 2283 with the following observation:

> "When the circumstances warrant, the federal court, as a court of equity, should mould its process to accord with the factual situation. At times this will warrant an injunction against state court proceedings. The principles of comity and present 2283 so recognize." Moore, supra.

An examination of the governing principles of comity and recent decided cases applying these concepts indicates that the

federal injunctive relief here requested is required in order to protect the very principles of federal-state relationships within the framework of national sovereignty which 2283 was designed to safeguard.

2. The normal rules of comity involving litigation between private parties do not apply when the relief sought is required to meet a threat of deprivation of fundamental constitutional rights.

The principles of comity which are embodied in 28 U.S.C. 2283 are based upon an analysis of federal-state relationships as they exist within the framework of the National Union. The purpose of the normal rules of comity as Judge Parker pointed out in interpreting the statutory predecessor to 2283 is "to avoid unseemly conflict between the two systems in ordinary litigation between private litigants", Brown v. Wright, 137 F.2d 484 (CA 4). But where federal action is required to protect fundamental civil and personal rights the rules of comity which apply "in ordinary litigation between private litigants", Brown v. Wright, supra, must give way to the higher considerations of federal supremacy. Compare McNeese v. Board of Education, ____U.S.____, 83 S.Ct. 1433 (June 3, 1963).

This principle which goes to the very heart of national sovereignty has been recently reaffirmed in a series of important decisions involving the protection of fundamental civil rights guaranteed by the Fourteenth Amendment. Within the last ten years these cases arising out of the Fifth Circuit and affirmed by the Supreme Court have repeatedly reasserted the proposition that federal injunctive relief will be granted against state criminal statutes or court proceedings when required to protect basic civil and personal rights.

The most recent case to restate this principle was United States v. Wood, 295 F.2d 772 (CA 5, 1961). In this case an appeal was taken from the denial of a temporary restraining order in a plenary federal action seeking the restraint of a state court criminal proceeding. The gravamen of the federal complaint was the assertion that the state criminal proceeding would have the immediate effect of deterring Negro citizens from exercising fundamental constitutional rights. In an opinion dispositive of many questions raised in the instant appeals the Court of Appeals for the Fifth Circuit reversed the District Court's refusal to grant the temporary restraining order.

As here, a threshold question for the Court in Wood was whether Section 2283 prohibited the granting of injunctive relief. The conclusion of the Court that 2283 was no bar rested, as Judge Rives' opinion indicates, upon several considerations all applicable here.* Fundamental to the opinion was the conclusion that the normal rules of comityadverted to by Judge Parker in Brown v. Wright, supra, have no relevance where there is a threat of the deprivation of fundamental personal and civil rights. Wood thus reasserts the principle that where state action through the enforcement of its criminal law threatens these basic constitutional rights "the normal equitable doctrines of comity between the court systems, doctrines which are the basis of the Douglas v. City of Jeannette rationale, have little or no bearing."

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* The impact of the assertion of "national interest" in the proceeding and the presence of an Act of Congress expressly authorizing the relief, both considerations raised by Judge Rives in Wood, are also here present and will be discussed infra.

Judges Rives traces the decisional authority for this important constitutional conclusion:

> ". . . this interpretation of the statute is in line with the doctrine in other federal cases in this Circuit dealing with the deprivation of constitutional rights on the basis of race or color. In an action to enjoin the enforcement of a criminal segregation statute, this Court stated in Morrison v. Davis 5 Cir. 1958, 252 F.2d 102, 103, cert. den. 1958, 365 US 968, that case (Browder v. Gayle 142 F.S. 707) disposes of the contention that the federal Court should not grant an injunction against the application or enforcement of a state statute the violation of which carries criminal sanctions."

The Fifth Circuit opinions, affirmed by the Supreme Court, which Judge Rives rests upon in Wood, are instructive. In Morrison v. Davis, supra, Judges Hutcheson, Tuttle and Jones faced the question as to whether to sustain federal injunctive relief against state criminal proceedings. In its per curiam opinion partially quoted by Judge Rives in Wood, supra, the Court went on to explain why the normal rules of comity do not apply in situations involving the threatened deprivation of constitutional rights protected by the Fourteenth Amendment and the Civil Rights Act:

> "This is not such a case as requires the withholding of federal Court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action, 42 USCA 1983. Whatever may be the rule as to other threatened prosecutions the Supreme Court in a case presenting an identical factual situation affirmed the judgment of the trial Court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with Douglas v. City of Jeannette, Pa. 319 U.S. 157, 63 S.Ct. 877, we must consider the earlier case modified."

The case of Browder v. Gayle, 142 F.S. 707, aff'd U.S. 903, relied upon in Wood and in Morrison, involved inter alia a request for injunctive relief restraining criminal state court proceedings arising out of a challenged ordinance in Montgomery, Alabama

requiring segregation in bus transportation. The three-judge court granting the injunctive relief requested set forth the basic question as to why the normal principles of comity do not apply in these situations. Judge Rives wrote for the court:

> "The defendants, relying upon Alabama Public Service Commission v. Southern Railway Co. 341 U.S. 341, 71 S.Ct. 762, insist that even if the Federal Court has jurisdiction, it should, in its discretion as a Court of Equity, and for reasons of comity, decline to exercise such jurisdiction until the state courts have ruled on the construction and validity of the statutes and ordinances. The short answer is that doctrine has no application where the plaintiffs complain they are being deprived of constitutional civil rights for the protection of which the Federal Courts have a responsibility as heavy as that which rests on the State Courts. Lane v. Wilson 307 US 268; Mitchell v. Wright 5 Cir 154 F.2d 924, Romero v. Weakley 9 Cir 226 F.2d 399, Wilson v. Beebe, D.C. Del. 99 F.Supp. 418; Cf. Doud v. Hodge 350 US 485." (emphasis added)

The principles developed in Wood, Morrison and Gayle reflect the deep understanding that the national system of dual sovereignties exists only within the context of federal supremacy. That is why the normal rules of comity must give way when fundamental constitutional rights such as those asserted by these appellants, Negro citizens of Danville, are threatened by state criminal proceedings or statutes. Where state court criminal proceedings or statutes are utilized in whole or in part to deter Negro citizens from exercising basic rights guaranteed to them under the Fourteenth Amendment in their efforts to achieve the liberty and equality which that Amendment promises, the Federal Courts in providing immediate injunctive relief are upholding the essence of federalism under the Constitution.

The Fifth Circuit recently had the occasion to face this problem once again in a strikingly analogous situation. In Bush v. Orleans Parish School Board, 194 F. Supp. 182 (D.Ct. ED La. 1961) Judge Rives, sitting on a three-judge court, met directly

the question of enjoining state court criminal proceedings and statutes. Louisiana had enacted a series of criminal laws designed in their operation, but not on their face, to deter Negro citizens from exercising their right to insist upon the desegregation of public education. The Attorney General of the State argued that 2283 and the policy of comity prohibited the federal court from enjoining these criminal prosecutions. Judge Rives replied sharply to this assertion:

> "True, 'it is a familiar rule that courts of equity do not ordinarily restrain criminal prosecution' Douglas v. Jeannette. . . But this rule cannot be applied mechanically. NAACP v. Bennett, cf. Doud v. Hodge 350 US 485. Special circumstances will sometimes compel a federal court to act. Truax v. Reich 239 US 33; Pierce v. Society 268 US 510; Hague v. CIO 307 US 496. . . . This is such a case."

Judge Rives then proceeded to explain why "this is such a case":

> "The challenged statutes are not ordinary criminal provisions. They constitute special legislation, passed as 'emergency' measures to accomplish specific purposes. Placed in context, their mission is all too clear. . . Constitutionally unable to require racial segregation in the public schools, arrested in their plan to close the integrated schools, and unsuccessful in its boycott of these schools by other means, the State has now marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club."

The Court in Bush proceeded to grant temporary relief restraining the enforcement of these criminal statutes and proceedings. The rationale and words of Bush are particularly appropriate in the appeals now before this Court. As in Bush the challenged vehicles of state policy, here the ordinance and the state court injunction, are not "ordinary criminal provisions". As in Bush they are "special", designed as "emergency measures" to "accomplish specific purposes". And as in Bush it must be said that "placed in context, their mission is all too clear".

Appellees cannot deny that these "emergency" measures were

obtained in order to counter the demands of the Negro citizens of Danville that the constitutional mandate of equality be enforced. The response of the constituted authorities in this city, "constitutionally unable to require racial segregation" and "unsuccessful" in their efforts to keep the Negro citizens from exercising constitutional rights has been to "marshal the full force of its criminal law to enforce its social philosophy through the policeman's club."

Here as in Bush the Constitution requires that the Federal Courts grant injunctive relief required to safeguard and protect rights and liberties which are the cornerstone of the federal system. To permit the use of state criminal enforcement machinery to frustrate fundamental constitutional liberties would make a mockery out of the very principles the rule of comity is designed to protect. Under the doctrines enunciated in Wood, Morrison, Gayle and Bush the Federal Courts have both the power and the duty to grant the relief prayed for.

3. The Federal Courts have had traditionally the power to restrain the enforcement of unconstitutional State action both civil and criminal in nature.

The principles developed in Wood, Morrison, Gayle and Bush, all cited supra, reflect the time-honored concept that the Federal Courts retain the power to enjoin the enforcement of any unconstitutional state statutes or action, whether civil or criminal in nature.

It has of course long been controlling law that the Federal Courts have the power and authority to enjoin state officials including prosecuting officials from resort to the legal processes of the State where such activity would result in violation of overriding Federal law or the Federal Constitution. AF of L v.

Watson, 327 U.S. 582; Truax v. Reich, 239 U.S. 33; Pierce v. Society of Sisters, 268 U.S. 510; Terrace v. Thompson, 263 U.S. 197; Hague v. CIO, 307 U.S. 496; Hynes v. Grimes Packing Co., 337 U.S. 86; Cline v. Frink Dairy Co., 274 U.S. 445.

Clearly 2283 must be read so as to incorporate this vital role of the Federal Courts. Professor Moore concludes in this respect, "Nor does 2283 prevent the federal courts from enjoining the institution of proceedings to enforce local statutes. . ." Both of the actions here before the Court have been brought to obtain relief from State conduct repugnant to the Constitution. Section 2283 does not interfere with the power of the Federal Courts to grant the injunctive relief prayed for.

This Court had the occasion to apply this concept in Brown v. Wright, 137 F.2d 484 (CA 4). In discussing the impact of Section 265, the predecessor of 2283, the Court by Judge Parker commented that:

> "In Hale v. Bimco Trading Co. 306 US 375, 59 S.Ct. 526 it was held that the section 265 would not preclude the granting of an injunction to restrain state officers from enforcing an unconstitutional state statute, even though a state court by mandamus might have directed them to enforce it."

Judge Parker then clearly indicated the purpose and policy underlying 2283. Where, as in the case of an unconstitutional state statute, federal injunctive action is required to safeguard the supremacy of federal law the policies of comity embodied in 2283 clearly give way to the higher considerations of federal supremacy. The principles of comity come into play only where, as Judge Parker commented, ordinary litigation between private parties might throw the two systems into "unseemly conflict".

In essence the same policy considerations were before this Court in School Board of Charlottesville, Va. v. Allen, 240 F.2d

59 (CA 4, 1956), cert. denied 77 S.Ct. 667. In this case the city authorities argued that the high comity principles embodied in the 11th Amendment prohibited a Federal Court from interfering with the processes of a State agency by way of injunctive relief. This Court responded in an opinion by Judge Parker, joined in by Judges Sobeloff and Soper. The Court commented that:

> "The difference between using the injunctive power of the Court to direct the exercise of discretion by a state officer and using it to enjoin the violation by him of constitutional rights under the authority of his office was pointed out nearly half century ago in Ex parte Young. . . It is argued that the doctrine thus laid down must be confined to individuals and may not be applied to corporate agencies of the state such as school boards. We see no grounds for such a distinction. . . A state can act only through agents; and whether the agent be an individual officer or a corporate agency, it ceases to represent the state when it attempts to use state power in violation of the Constitution and may be enjoined from such unconstitutional action."

Accordingly the Court held that no considerations of constitutional comity as embodied in the 11th Amendment applied to the injunctive relief requested. The same considerations apply here. When a state court injunction is utilized in an unconstitutional manner to deter citizens from exercise of their constitutional rights, that action ceases being a "judicial" act in the same sense that the unconstitutional actions of a state officer cease to be actions of the "State" for purposes of the 11th Amendment. School Board of Charlottesville v. Allen, supra. 2283 refers to "proceedings in a State Court". In this same sense a state judge or prosecutor "ceases to represent" the state court when he "attempts" to use state power in violation of the Constitution "and in the same way he "may be enjoined from such unconstitutional action". School Board of Charlottesville v. Allen, supra.

4. The ordinary rules of comity embodied in Section 2283 do not here apply since the injunctive relief sought is expressly authorized by an Act of Congress.

Section 2283 does not apply by its own terms where the injunctive relief sought is expressly authorized by an Act of Congress. The relief here sought is expressly authorized by the Civil Rights Statutes, Title 42 U.S.C.1981, 1983, and 1985. The Civil Rights Act and in particular Section 1983 specifically authorizes equitable relief of the nature here sought. See for example Morrison v. Davis, supra, Browder v. Gayle, supra. See Hague v. C.I.O., supra. It was within the clear contemplation of Congress in enacting the Civil Rights Statutes that all state officials would be subject to the scope of its remedial legislation. See for example Ex parte Virginia, 100 U.S. 341. As the Court said in United States v. Raines, 362 U.S. 17, "every state official high and low is bound by the 14th and 15th Amendments".

The Court of Appeals for the Fifth Circuit has held directly that 42 U.S.C.A. 1983 expressly creates a cause of action for injunctive relief of the nature here sought thus coming within the specific statutory exemption in Section 2283. Morrison v. Davis, 5th Cir., supra.

As the Court said in Morrison:

> "This is not such a case as requires the withholding of federal court action for reason of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action, 42 USCA 1983." (emphasis added)

It is of course not necessary that any "prescribed formula" be followed in the "express authorization" as required by 2283. "An authorization need not expressly refer to 2283", Amalgamated Clothing Workers v. Richmond, 348 U.S. 511. The authorization

for equitable relief of the type here sought is clearly contained in the Civil Rights Statutes. Under the holding of Morrison 2283 and the ordinary rules of comity do not apply to the relief prayed for.

Moreover the holding of the Court in Wood also supports this conclusion. In Wood the Court held that 42 U.S.C. 1971 was a statute expressly authorizing injunctive relief against state criminal court proceedings and thus fell squarely within the stated exception to 2283. 42 U.S.C. 1971 is no different in fundamental substance from 42 U.S.C. 1983 and 1985 upon which the present actions rest. It is amply clear that new 1971, a recent amendment to the Civil Rights Act, is merely a detailed procedural addition to the substance of old 1971 authorizing the United States to protect procedurally the rights previously granted to private persons. United States v. Raines, 362 U.S. 17. Under the holding of Wood, 1983, like 1971, is a statute expressly authorizing the equitable relief here sought, and thus falls within the statutory exception to 2283.

5. The ordinary rules of comity as well as Section 2283 do not affect the power of the Federal courts to restrain state criminal statutes and proceedings where the national interest is involved.

It is clear that the ordinary rules of comity as well as Section 2283 do not affect the power of federal courts to restrain state court proceedings where the national interest is involved. Leiter Minerals v. United States, 352 U.S. 220; United States v. Wood, supra, Brown v. Wright, supra (opinion by Judge Parker). In these cases the principle was developed that 2283 does not affect a proceeding in which the United States is a party. The rationale underlying these decisions relates to the concept that where the national interest is involved the normal principles of

comity which arise out of a concern lest litigation between private parties involve the two systems in conflict do not apply.

In Wood, supra, one of the grounds for the decision was that Section 2283 could not apply in situations where the United States asserted an interest. Similarly in Leiter Minerals, supra, Mr. Justice Frankfurter pointed out for the Court that Section 2283 had no impact where injunctive relief was required "to prevent threatened irreparable injury to a national interest". These opinions reflect once again the understanding that the principles of comity exist only within a framework of federal supremacy. See Alabama v. United States, 304 F.2d 853 (CA 5); United States v. Manning, 215 F.S. 272, 296.

The cases now before the Court could not more clearly be matters vested with the highest national interest. They involve the protection of national citizenship rights of a large class of Negro citizens who are seeking implementation of the high objectives of equality before the law. That these objectives are not personal but national in scope is evident not only by the many decisions of the Supreme Court, cf. Brown v. Board of Education and following cases, but by the recent pronouncements of the President of the United States.

It does not require extensive argument to assert today that the implementation and enforcement of the equal rights guarantees of the Fourteenth Amendment are of the highest national importance. Surely they are as high a level of national importance as the mineral land rights vested in the United States in Leiter Minerals, supra. Under the decided cases ordinary comity principles as well as Section 2283 bow before the superior national interest. Wood v. United States, Leiter Minerals v. United States, Brown v. Wright, all supra.

The rationale of these cases is particularly applicable here. The United States is in a very real and formal sense a party to these proceedings. In a companion matter, see PART THREE infra, involving the same state court injunction, the United States moved to intervene in the District Court as amicus curiae. The motion was granted (A-7). In its Brief received by the District Court, and made a part of these proceedings by appellants, the United States sets forth at some length the national interest involved in the complex of cases arising out of the same subject matter here before the Court. Moreover at the argument before this Court on August 8th the United States again appeared and urged this Court to grant the temporary relief prayed for in all pending appeals. The United States has thus appeared actively as a party in all phases of this litigation. Under the rule of United States v. Wood and Leiter Minerals v. United States Section 2283 and the rules of comity do not apply.

This is no ordinary case. It involves the "paramount sovereignty" of the nation and the Federal Constitution. Cf. U.S. v. Manning, supra. The responsibility of the Federal Courts to halt the wholesale disregard for nationally protected citizenship rights in a blind attempt to forestall the inevitability of compliance with the Equal Protection Clause will not be "hamstrung" by treating the appeals as "ordinary litigation between private litigants". Cf. Parker, J. in Brown v. Wright, supra. This is a case in which in truth the Constitution is the party before the Court, where national rights and interests require the relief prayed for no rule of comity may undermine the Supremacy Clause. McNeese v. Board of Education; United States v. Wood; Leiter Minerals v. United States; Brown v. Wright, all supra. See also United States v. Raines, 362 U.S. 17.

B. The District Court has Equitable Jurisdiction to Grant the Relief Prayed For.

The long established rule of equity jurisdiction in respect to the enjoining of criminal proceedings was carefully set down in Douglas v. City of Jeannette, 319 U.S. 157. The principle there reiterated was that equity will not "ordinarily" restrain criminal proceedings, but only act in those "exceptional cases which call for the intervention of a court of equity to prevent irreparable injury which is clear and imminent." The doctrine of Jeannette has frequently been misconstrued to imply a blanket prohibition upon all equitable relief against state criminal statutes or court proceedings. This of course neither conforms to the actual words of Jeannette or to its rationale which is founded upon classic concepts of equity law.

The Court of Appeals for the Fifth Circuit has discussed the impact of the Jeannette doctrine upon situations identical to the present appeals. Denton v. City of Carrollton, Georgia, 235 F.2d 481 (CA 5, 1956). In this case a federal suit was brought for a declaratory judgment and injunctive relief against the enforcement of a city ordinance claimed to be unconstitutional under the Fourteenth Amendment. The District Court declined to exercise jurisdiction or to issue the relief sought relying upon Douglas v. Jeannette. The Court of Appeals reversed holding:

> "But this wholesome rule [Douglas v. Jeannette] envisages itself the necessity under circumstances of genuine and irretrievable damage, for affording equitable relief even though the result is to forbid criminal prosecution or other legal proceedings."

The Court reversed the denial of injunctive relief stating:

> "There was therefore a substantial basis for equitable relief. AFL v. Watson, supra; Hynes v. Grimes Packing Co. 337 US 86; Shields v. Utah, 305 US 177."

The Fifth Circuit followed the same approach in City of Houston v. Dobbs Co., 232 F.2d 428 (CA 5, 1956). In an opinion by Judge Tuttle, the Court affirmed the granting of permanent injunctive relief against the enforcement of a criminal ordinance of the City of Houston. The Court held:

> "Appellant attacks the jurisdiction of the Court on the well recognized principle that courts will not normally enjoin the enforcement of criminal statutes or ordinances whose constitutionality is challenged. There is an equally well recognized exception to this rule as stated in the case cited by the appellant in its brief, Spielman Motor Sales Co. v. Dodge, 295 US 89 where the Court says, 'to justify such interference there must be exceptional circumstances and a clear showing that an injunction is necessary to afford adequate protection of constitutional rights. The case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable."

And even in those cases where the courts have declined to exercise equity jurisdiction the clear power of the federal courts to enjoin state criminal proceedings upon a showing of irreparable injury to constitutional rights has always been reaffirmed. Cf. Wilson v. Schnettler, 365 U.S. 381 (1961); AFof L v. Watson, 327 U.S. 582; Stefanelli v. Minard, 342 U.S. 117.

This traditional ability of a court of equity to prevent immediate and irreparable injury is particularly required in the protection of fundamental civil and personal rights. Only recently we have been reminded that these rights, and in particular those guaranteed by the Fourteenth Amendment, are "present rights", Watson v. City of Memphis, _____U.S._____ 83 S.Ct. 1314 (May 27, 1963). Mr. Justice Goldberg emphasized that these "present rights . . . are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now and, unless there is an overwhelming compelling reason, they are to be promptly

fulfilled" at p. 1318.

When the fundamental rights of assembly, petition, speech, are interfered with, these "present rights" are irretrievably lost. Equity jurisdiction alone is available to guarantee that these "present rights" do not become "merely hopes to some future enjoyment of some formalistic constitutional promise". Watson v. City of Memphis, supra. These rights must be "promptly fulfilled". The loss of fundamental rights is perhaps the most serious and irreparable injury which our system of government could contemplate. The federal courts will not hesitate to properly apply the powers of the equity side to guarantee that these rights are "promptly fulfilled". Under the rule of Jeannette a threat to the "present right" of assembly, speech, and petition, particularly within the context of an effort to enforce the Equal Protection Clause, is the "immediate and irreparable injury" necessary to invoke the equity power.

In the words of Judge Tuttle in City of Houston, supra, the "case before us presents a clear illustration of such exceptional circumstances as would make the general rule inapplicable." As in Wood the irreparable injury which will be suffered unless the equitable powers of the federal courts are available is of the most serious character. The injuries are not those resulting from the normal course of the criminal law, of Douglas v. City of Jeannette and Stefanelli v. Minard, both supra.

The irreparable injuries suffered here are the daily interferences with the exercise of fundamental constitutional rights guaranteed by the Fourteenth Amendment. The grave and irreparable damage created by the daily application and enforcement of the ordinance and state court injunction are not primarily the jail sentences inflicted, as serious as they are, but the deterring

effect they have upon all Negro citizens in respect to their exercise of constitutional liberties.

As in Wood and Bush the threatened damage which the federal court must restrain is not primarily the impact of the pending prosecutions upon the particular defendants but rather the serious and sweeping effect of this use of state police power upon the exercise of basic constitutional rights by Negro citizens in their efforts to obtain the goals of equality and freedom. Cf. Bush v. New Orleans, supra.

This is the essential difference between such cases as Stefanelli, supra, and Wood, Bush and the present cases. In Stefanelli all that was involved was the injury conceivably to be inflicted upon one defendant in the course of the impending prosecution. That was an injury resulting from the normal operation of a criminal trial. It was an injury and which could be remedied upon appeal.

Here, as in Bush and Wood, the injury complained of is to hundreds and thousands of persons in the immediate and daily exercise of their constitutional rights. The injury flows from the deterring effect of the prosecutions rather than from the prosecutions themselves. Cf. Congress of Racial Equality v. Douglas, supra. See POINT ONE, supra. And in these appeals, as in Wood and Bush, this occurs because the state court proceedings are designed to achieve this objective. As the Court said in Bush, "Placed in context their mission is all too clear." We submit that as in Wood and Bush the present proceeding before this Court is one of those "exceptional" situations in which the equitable powers of the federal courts must be exercised. The injuries to fundamental constitutional liberties are here serious and irreparable daily injuries. They present a classic situation for equitable relief.

C. The Opinions of the District Court Dismissing the Actions and Denying Temporary Relief are Clearly Erroneous.

The opinions of the lower court dismissing the complaints and denying temporary relief in Chase v. McCain and Chase v. Aiken rest primarily upon the conclusion that "a federal court should refrain from exercising [jurisdiction] until the plaintiffs have exhausted their remedies in the state courts." (A-). As a matter of constitutional law and federal jurisdiction this assumption was plainly erroneous. And if the assumption rested upon a belief that plaintiffs had a "plain and adequate remedy at law. . . available to them", it was a belief unsupported by the actual situation.

1. The simple answer to the assumptions of the lower court is McNeese v. Board of Education, ____U.S.____, 83 S.Ct. 1433 (June 3, 1963). The McNeese opinion totally disposes of the contention of the lower court that the plaintiffs here are required to exhaust their state remedies before seeking protection of federal rights from a federal tribunal.

Since at every stage in the many proceedings arising out of the Danville demonstrations the plaintiffs have been met with the contention that the federal court was not a proper arena to seek the vindication of federal rights it is instructive to test this assumption by the strong words of McNeese:

> "We have, however, in the present case no underlying issue of state law controlling this litigation. The right alleged is as plainly federal in origin and nature as those vindicated in Brown v. Board of Education. . . Nor is the federal right in any way entangled in a skein of state law that must be untangled before the federal case can proceed. For petitioners assert that respondents have been and are depriving them of rights protected by the Fourteenth Amendment. It is immaterial whether respondent's conduct is legal or illegal as a matter of state law. Monroe v. Pape . . . Such claims are entitled to be adjudicated in the

federal courts. Monroe v. Pape, supra, Gayle v. Browder, 352 US 903. . . Borders v. Rippy 247 F.2d 268. . . cf: e.g. Lane v. Wilson 307 US 268; Smith v. Allwright, 321 US 649; Schnell v. Davis 336 US 933; Turner v. Memphis 369 US 350."

And then to make it crystal clear that reluctance of a federal court to accept its responsibility in the vindication of fundamental civil and personal rights will no longer be tolerated Mr. Justice Douglas adopted for the Court the statement of Judge Murrah in Stapleton v. Mitchell. The Justice wrote only this June:

> "As well stated by Judge Murrah in Stapleton v. Mitchell, 60 F.Supp 51, 55, appeal dismissed pursuant to stipulation, 326 US 690:
>
> > 'We yet like to believe that wherever the Federal courts sit human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline to exercise that jurisdiction simply because the rights asserted may be adjudicated in some other forum.'"

The analysis in McNeese applies word for word to the present appeals.

a) There is "no underlying issue of state law controlling this litigation". The sole issue here as we have discussed at some length in POINT ONE is the validity of the ordinance and the injunctions under the Federal Constitution. The issue is completely one of federal constitutional law.

b) The "right alleged is as plainly federal in origin and nature as those vindicated in Brown v. Board of Education". The rights of assembly, speech and petition are "pristine" First and Fourteenth Amendment rights. Edwards v. South Carolina, supra. They are rights inherent in United States citizenship. United States v. Cruikshank, 92 U.S. 542; Slaughterhouse Cases, 16 Wall. 79; Hague v. CIO, 307 U.S. 496. They are as "federal in origin and nature" as the right to the freedom promised by the Equal

Protection Clause and the Thirteenth Amendment -- the goal appellants seek through the exercise of these very federal rights.

c) "Nor is the federal right in any way entangled in a skein of state law that must be untangled before the federal case can proceed." The issue of the constitutionality of the ordinance and the injunction must be measured solely in terms of federal constitutional law. These state "commands", Peterson v. City of Greenville, supra, are patently violative of the First and Fourteenth Amendments on their face. See POINT ONE, supra. No issue of state law need be "untangled" before the federal case can proceed. There is no rational necessity for federal reluctance to adjudicate this direct question of federal law.

d) And finally it is of course quite "immaterial whether [appellants'] conduct is legal or illegal as a matter of state law".

The conclusion here must be the conclusion in McNeese. The District Court simply "had not the right to decline to exercise that jurisdiction simply because the rights asserted may be adjudicated in some other forum." McNeese, at p. 1437.

Based upon this careful analysis of the irrationality of any requirement that a citizen must "exhaust" his state remedies before asserting his federal remedies in vindication of fundamental federal rights, the Court in McNeese proceeded to establish certain firm concepts which are here dispositive. They concern the availability of federal relief under Title 42 U.S. 1983, the basic statute upon which these complaints rest. Thus the Court has now squarely held that "relief under the Civil Rights Act may not be defeated because relief was not first sought under state law which provided a remedy", at p. 1435. Lest there be any confusion on this count the Court went on to emphasize that the very purposes

of the Civil Rights Act would be defeated "if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court," at p. 1436.

We respectfully suggest that the holding in McNeese is totally dispositive. The District Court was clearly wrong. The orders dismissing the complaints and denying temporary relief must be reversed.

2. Furthermore, as in McNeese, "it is by no means clear" that state remedies available to appellants are "sufficiently adequate to preclude prior resort to a federal court for protection of their federal rights." McNeese at p. 1437. It is perfectly clear that the state remedy for vindication of these fundamental rights is neither "plain" nor "adequate". And as in McNeese the conclusion must be that "when federal rights are subject to such tenuous protection, prior resort to a state proceeding is not necessary." McNeese at p. 1438.

a) The central issue in these actions is the validity of the ordinance and the injunctions under the Federal Constitution. These are the federal questions which appellants seek to adjudicate in the federal district court. Yet these questions are not open to litigation in the very proceedings which the lower court would remit appellants to. In neither the contempt trials nor the trials for violation of the ordinance were appellants permitted to raise the constitutional questions. These rights are "present rights". They are "warrants for the here and now". Watson v. City of Memphis, supra. If they cannot be immediately protected in a court of law there is no protection at all. It is simply sophistry to deny access to a federal tribunal on the ground that state remedies must be first pursued when the state proceedings refuse to hear the very questions which are the

gravamen of the federal action.

The posture which the lower court forces appellants into hardly meets the high responsibilities of the Federal judicial system. McNeese v. Board of Education, supra; Stapleton v. Mitchell, supra. Appellants seek relief in a federal court from the impact of a patently unconstitutional ordinance and injunction. They are however told that they must pursue their remedies in state tribunals which refuse to consider the issues the federal court "abstains" from considering. This strange and sterile application of a formula unrelated to the realities of the constitutional need once again brings to mind Judge Wisdom's apt comment recently in U.S. v. City of Jackson, Miss., 318 F.2d 1, "This disingenuous quibble must rest on the assumption that federal judges are more naive than ordinary men."

Perhaps acting upon such an assumption appellees solemnly and successfully urge the lower federal court to requite appellants to exhaust their state remedies while simultaneously they proceed to convince the state courts that the constitutional issues have no place in those proceedings. The only result of this double-barrelled attack is to deprive appellants of any forum whatsoever to seek the adjudication of fundamental federal rights. But with Judge Murrah, "We yet like to believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication." McNeese at p. 1437.

b) Furthermore this Court has already found as a matter of fact that under the circumstances of the present situation "there is no adequate legal remedy in the state courts." Order of August 8, 1963 (A-48). In support of this finding this Court entered the following conclusions of fact:

"In support of the plaintiff's motion for emergency relief, affidavits have been filed showing that all the criminal proceedings have been set for trial and one or more have been tried. Earlier, when several persons had been convicted and sentenced to effective jail terms of 45 - 90 days, they had been denied bail in the state court pending appeal, making impossible effective appellate review in the state courts of the constitutionality of the injunction and ordinance. Moreover, present trial and conviction of others among the persons charged with violation of the ordinance and injunction would moot their appeals in this court if they are required to serve their sentences before these cases can be heard and determined in this court. Should some or all of them be granted bail after conviction and pending appeal, they would be put to the expense of an appeal through the state courts while the same constitutional questions are pending in this court. On the other hand, hasty trials, if the convicted defendants are to be released on bail pending appeal serve no obvious purpose in aid of necessary maintenance of law and order.

Even more burdensome to many of the plaintiffs is the fact that, over their objections, some of their contempt charges have been transferred to other courts of Virginia, some as much as 200 miles from Danville, to which they must go to transport their witnesses if they are to defend themselves. Under those circumstances there is no adequate legal remedy in the state courts which, if one existed, might stay our hand." Order of August 8th, 1963 (A-48)

Upon these findings of fact the conclusion of McNeese is particularly appropriate: "When federal rights are subject to such tenuous protection, prior resort to a state proceeding is not necessary." McNeese at p. 1438.

3. The conclusion of this Court that there is no adequate legal remedy in the state courts is the short answer to the lower court's reliance upon Henderson v. Trailway Bus Co., 194 F.Supp. 423. Henderson rested its denial of injunctive relief alternatively upon the presence of "a plain and adequate remedy at law" which was available to the plaintiffs in that proceeding. Since in these proceedings it has already been determined by this Court that "there is no adequate legal remedy" available to the

plaintiffs here, Henderson is totally inapposite.*

The lack of relevancy of the Henderson decision to these proceedings is additionally indicated by the careful emphasis placed by Judge Bryan upon the conclusion of the three-judge court that "Nothing here indicates that a full and fair presentation, hearing and consideration of their views upon the validity of the two statutes cannot be had before the state courts in these prosecutions." Henderson v. Trailway Bus Co., supra.** To test the present proceedings by this yardstick is to underline the conclusion of this Court that "there is no adequate legal remedy in the state courts." August 8th Order (A-).

4. The lower court clearly erred in denying the motions for temporary relief. The orders denying temporary relief indicate that as with the dismissal of the actions the rationale rests upon the conception that appellants had failed somehow to exhaust state remedies. This holding misconceives the nature of the actions and is, as we have indicated above, without legal basis. McNeese v. Board of Education, supra, and cases cited supra.

The preceding discussion has demonstrated in many different ways the compelling necessity for the temporary relief sought.

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* It is interesting that in Henderson despite the equitable considerations the Court there adjudicated the constitutional issue on the merits.

** See in this respect Spence v. Cole, 137 F.2d 71 (CA 4 per curiam) stating that there was "no reason to think that the state courts would not protect the constitutional rights of plaintiffs upon such prosecutions being instituted. Cf. Moss v. Hornig, 314 F.2d 89 (CA 2) holding that Federal courts of equity will withhold injunctive relief against criminal state proceedings only "where all constitutional issues can be decided in the first instance as a matter of course by the state courts". Accordingly the Court held since the constitutional issue was not available in state court, federal court must proceed to merits.

Both the ordinance and the state court injunctions are patently unconstitutional on their face and as applied. POINT ONE, supra. Under such a situation where it is abundantly clear that plaintiffs will succeed on the merits and that a decree must be entered declaring the ordinance and injunctions invalid and enjoining their operation, it would be clear error to deny temporary relief. Ohio Oil Co. v. Conway, 279 U.S. 813, United States v. Wood, supra, and cases cited supra at POINT TWO (a) and (b).*

The District Court of course had proper jurisdiction over the complaints. Jurisdiction was vested under the general jurisdictional statutes and in particular under the Civil Rights Act, 42 U.S.C. 1981, 1983, and 1985. Hague v. C.I.O., supra, and cases following. Since the lower court properly had jurisdiction over the actions under the Civil Rights Statutes the temporary injunctive relief requested was clearly required to preserve that jurisdiction. If the arrests and trials under the ordinance and the state court injunction continue, the gravamen of the federal actions, the immediate and irreparable injury to fundamental constitutional rights, will continue. This is a classic example of the necessity for equitable relief in aid of the jurisdiction of the Court.

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* Appeals from the denial of temporary relief are before this Court. Under the circumstances of these cases this Court has jurisdiction over the appeals from the denials of the temporary restraining orders. United States v. Wood, supra. As the Court there held, "We therefore determine the denial of the temporary restraining order to be a final decision, appealable under 28 U.S.C.A. 1291."

Furthermore, the appeals here are also from final orders within the meaning of 28 U.S.C. 1291 in that full hearings were held on the motions for temporary injunctions. The orders denying temporary restraining orders are in purpose and effect orders denying temporary injunctions. Such orders are therefore appealable under Title 28 USC 1292 sub.(1).

But in a more fundamental sense the failure to grant temporary relief frustrates the very purpose of the Federal Courts to be the "chief. . . tribunals for the enforcement of federal rights". McNeese v. Board of Education, supra, at p. 1436. Here the pressing question of grave importance is the immediate protection of the basic constitutional rights of assembly, of speech, and of the right to petition for a redress of grievances. And these rights have been and are daily utilized to achieve the high constitutional goal of equality guaranteed by the Fourteenth Amendment. We have demonstrated above that the destruction of these basic rights, especially when invoked as here for the very purpose of achieving aims themselves of the highest constitutional magnitude, is "immediate and irreparable injury" in the most impelling and direct way.

As the Court of Appeals sharply pointed out in Denton v. City of Carrollton, Georgia, 235 F.2d 481 (CA 5), "to decline equitable relief would be to deny judicial review altogether". See also United States v. Wood, supra. The state courts have clearly declined to adjudicate these important issues. The immediate and irreparable injury to the exercise of these constitutional rights cannot receive immediate redress save in the federal courts. The temporary injunctive relief prayed for in the complaints is urgently required to prevent the constant and daily irreparable interference with the exercise of these basic liberties. The denial of temporary relief not only would leave the thousands of Negro citizens of this city living in the shadow of the dragnet sweep of these ordinances and injunctions without any means of vindicating their rights under the Federal Constitution. It would leave the Constitution itself unprotected and without judicial enforcement. This the Federal Courts will

will not tolerate. The temporary relief here requested is required in the highest national interest. It is consistent with the most fundamental responsibilities of the Federal judiciary.

PART TWO

LEWIS, et al. v. BENNETT, et al No. 9083

Statement

The appellants, Negro citizens of Danville, Virginia, have been denied unemployment compensation benefits by the defendant officials solely because of their exercise of Fourteenth Amendment rights to assemble, speak and petition for redress of grievances inflicted upon them in violation of the Equal Protection Clause. These benefits to which appellants are concededly otherwise entitled, have been denied to them because they have been arrested for violation of the ordinance and state court injunctions presently under attack as patently unconstitutional in Chase v. Aiken and Chase v. McCain, supra. The denial rests upon a finding that because appellants have been arrested they are not "able" and "available" to work within the meaning of Section 60-46 of the Code of Virginia. This conclusion was reached unrelated to the fact that, although arrested, appellants are under bond awaiting trial and are not incarcerated.

Appellants instituted this federal action seeking permanent and temporary relief. The lower court entered an order denying the motion for temporary relief (A-28). This order was entered after the hearing in Baines, et al v. Danville. This hearing was stipulated as covering the requests for temporary relief in all of the pending actions including Lewis v. Bennett. The order of the lower court denied the temporary relief requested on the same grounds as the denials in Chase v. McCain and Chase v. Aiken, namely that appellants had failed to exhaust their state remedies and that no immediate and irreparable injury was shown (A-28). An appeal was taken to this Court (A-29).

POINT ONE

THE DENIAL OF UNEMPLOYMENT INSURANCE BENEFITS TO APPELLANTS VIOLATED THE FOURTEENTH AMENDMENT.

1. Section 60-46 of the Code of Virginia provides that:

"An unemployed individual shall be eligible to receive benefits with respect to any work only if the Commission finds that . . .

(c) He is able to work and is available to work."

The appellants are fully qualified for payments under the above statutory provision. None of the statutory limitations upon the receipt of benefits affect appellants or are applicable here. See Section 60-47 of the Virginia Code. The definitions of "able" and "available" are consistently settled in numerous cases. Thus, in Compensation Commission v. Dan River Mills, Inc., 91 S.E.2d 642, it was held that "able to work means that an applicant must possess physical and mental ability to perform some substantial saleable service. . ." and in Unemployment Compensation Commission v. Tomko, 65 S.E.2d 524, it was held that "available" means one who "must be willing to accept any suitable work offered him, without attaching restrictions or conditions not customary in his occupation, but desired by him because of his particular needs or circumstances."

The sole ground for concluding that the appellants were not "able to work" and "available" to work was their participation in certain of the demonstrations in the City of Danville seeking the enforcement of Equal Protection objectives. These activities resulted in the arrest of appellants by the City authorities. Appellants were then placed on bond to await trial. Clearly under the plain words of the Virginia Code appellants were "able" to work and "available" for work. They could be considered as

"unavailable" or "unable" to work only if their participation in the demonstrations in some way deprived them of the right to receive the benefits or the right to accept employment in the State of Virginia. Either assumption is in flagrant violation of the Fourteenth Amendment.

2. Appellants' participation in the demonstrations of Danville Negro citizens seeking the redress of grievances under the Equal Protection Clause is protected activity under the Fourteenth Amendment. Edwards v. South Carolina, supra, Hague v. CIO, supra, and cases cited in PART ONE, POINT ONE, supra. Appellants' activities constitute the exercise of rights of speech, assembly and petition protected by the First Amendment and incorporated into the Fourteenth. Edwards v. South Carolina, supra.

The central question in this proceeding is whether the denial of unemployment insurance benefits imposes any burden upon appellants' exercise of these First and Fourteenth Amendment rights. This question has now been authoritatively settled by the Supreme Court this term in Sherbert v. Verner, _____U.S._____, 83 S.Ct. 1790 (June 17, 1963). The Sherbert opinion struck down the denial of unemployment insurance benefits based upon activities of the unemployed person involving the exercise of First Amendment and Fourteenth Amendment rights. The Sherbert opinion is dispositive in all respects.

3. As in Sherbert the fact that the ruling is not a direct imposition of criminal sanctions for the exercise of the constitutional right is treated as immaterial. The fact that no direct restraint or punishment is placed on the exercise of these rights is of course constitutionally irrelevant. Sherbert v. Verner, supra; A.C.A. v. Douds, 339 U.S. 382. Cf. Smith v. California,

361 U.S. 147. As in Sherbert the ruling here forces the appellants to choose between exercising First Amendment rights and forfeiting benefits, on the one hand, and abandoning these rights in order to receive the benefits on the other hand. In Sherbert the First Amendment right was freedom of religion. Here the First Amendment rights are assembly, speech and petition. And as in Sherbert "Governmental imposition of such a choice puts the same kind of burden upon the free exercise of [First Amendment rights] as would a fine" imposed upon appellants for the exercise of these rights.

4. It is now well settled that unemployment compensation benefits may not be considered to be a "privilege" in an effort to avoid the constitutional infirmity of penalizing recipients for the exercise of constitutional rights. Sherbert v. Verner, supra. As Mr. Justice Brennan there said, "It is too late in the day to doubt that the liberties of religion and expression may be infringed by the denial or placing of a condition upon a benefit or privilege," at p. 1794. See also A.C.A. v. Douds, supra; Wieman v. Updegraff, 344 U.S. 183; Hannegan v. Esquire, 327 U.S. 183.

Speiser v. Randall, 357 U.S. 513 is also directly in point. The Court there held that "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech." As the Court said in Sherbert, "the imposition of such a condition upon even a gratuitous benefit inevitably deterred or discouraged the exercise of First Amendment rights."

5. No compelling state interest justifies this substantial infringement of appellants' rights under the First and Fourteenth Amendments. Sherbert v. Verner, supra. "Only the gravest abuses, endangering paramount interests, give occasion for permissible

limitation", Thomas v. Collins, supra. The conclusion of the Court in Sherbert that no such limitation was there permissible is equally applicable here. As the Court pointed out there even if there was in fact some danger to the administration of the unemployment insurance fund by the activities of appellants, a speculation absurd on its face in the instant situation, "it would plainly be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without abridging First Amendment rights," at p. 1796. See also cases cited in POINT ONE, PART ONE, supra.

Under the doctrine of Sherbert v. Verner the penalizing of appellants for the exercise of First Amendment rights by depriving them of their unemployment insurance runs afoul of the Fourteenth Amendment. The action of the state authorities is clearly unconstitutional.

POINT TWO

THE DENIAL OF TEMPORARY RELIEF BY THE LOWER COURT WAS CLEARLY ERRONEOUS.

1. Once again the lower court rests its refusal to meet its obligations to adjudicate and vindicate federal rights upon the proposition that appellants must exhaust their state remedies. Again the lower court misconceives the posture of the action. Under the rule of McNeese v. Board of Education, supra, appellants will not be required to await the long, frustrating, and futile processes of state proceedings to obtain a prompt adjudication of a right which is "plainly federal in origin and nature". McNeese v. Board of Education, supra, and cases cited supra at PART ONE, POINT TWO (c). The cause of action for relief under the Civil Rights Act "may not be defeated because relief was not

first sought under state law which provided a remedy", McNeese at p. 1435.

2. We do not believe that extended argument is required to demonstrate to this or any court that the injuries here suffered are "immediate and irreparable". They are in a certain sense the most immediate and most irreparable injuries inflicted upon the Negro citizens of Danville. As the complaint, the testimony, and the affidavits indicate the appellants are unemployed workers in a community basically providing seasonal employment to its Negro residents. The unemployment benefits are the sole means of support to these appellants and their families. They are the sole method of providing food, shelter and the necessities of life. The deprivation of these needs is immediate and irreparable in the most literal meaning of those words.

Men may not be punished for exercising their constitutional rights. But it is equally fundamental to any system of democratic government that men may not be starved for exercising these rights. Nor will any government which prides itself upon the preservation of human dignity permit the wives and children of men to be deprived of the necessities of life because their husbands and fathers sought to obtain constitutionally promised goals through constitutionally guaranteed means. The order of the lower court denying temporary relief should be reversed.

PART THREE

BAINES, et al. v. CITY OF DANVILLE No. 9080
McGHEE, et al. v. CITY OF DANVILLE No. 9082

Statement

Two petitions for the removal of certain state court criminal prosecutions were duly filed on June 17 and June 18 in the United States District Court for the Western District of Virginia pursuant to Title 28 U.S.C. 1443. The criminal prosecutions removed to the District Court arose out of alleged violations of the ex parte temporary injunction and restraining order entered by the Corporation Court of the City of Danville on June 6th, 1963. See PART TWO, supra. The petition for removal in Baines, et al. v. City of Danville is set forth at p. 5 in the Appendix to this Brief, and the petition in McGhee, et al. v. City of Danville is set forth at p. 1. The averments in both petitions are substantially similar and in total involve one hundred and thirty-eight pending criminal prosecutions for contempt of the state court injunction.

Promptly after the filing of these petitions the defendants in the state court proceedings gave written notice to the plaintiff and filed copies of the petitions with the Clerk of the Corporation Court of the City of Danville. This effected the removal of the cases. 28 U.S.C. 1446(e). The plaintiff in the state court proceedings, the City of Danville, then moved in District Court to remand the cases to the Corporation Court. Testimony on this motion was adduced in hearings in the District Court on June 24th and 25th. On July 11th an order was entered by the District Court granting the motion to remand the cases (A-7). No opinion was ever filed. The District Court refused to stay the order remanding the cases.

On July 11th notices of appeal were filed (A-8 ; A-8).

On July 16th a Petition for Writ of Mandamus was filed with this Court (A- 9). On August 8th this Court entered an order restraining and enjoining the Commonwealth Attorney of the City of Danville and the Clerk of the Corporation Court among others from bringing to trial any person for the alleged violation of the injunctive orders of the Corporation Court until the determination of these appeals. Accordingly the criminal proceedings which are the subject of the removal petitions are presently stayed.

We will discuss first the threshold question of the jurisdiction of this Court to hear and determine the appeals from the orders remanding the cases to the state court or in the alternative its jurisdiction to entertain the petition for a writ of mandamus, and secondly the power and duty of the District Court to hear and decide the cases removed to federal jurisdiction pursuant to Title 28 U.S.C. 1443.

POINT ONE

THIS COURT HAS JURISDICTION TO HEAR AND DETERMINE THE APPEALS OR TO ENTERTAIN THE PETITION FOR A WRIT OF MANDAMUS.

Summary of Argument

The state court criminal prosecutions were removed to the District Court pursuant to the authority of Title 28 U.S.C. 1443, subsections (1) and (2), the Civil Rights Removal Statute. This statute reads as follows:

> "... 1443. Civil rights cases.
> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

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> "... 1443. Civil rights cases.
> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

The orders remanding the cases to the state court would be ordinarily reviewable in the Court of Appeals unless appellate review is totally foreclosed by the operation of Title 28 U.S.C. 1447 (d). This provision states:

"An order remanding a case to the State Court from which it was removed is not reviewable on appeal or otherwise."

However, an examination of the statutory history of both 1443 and 1447 (d), the relevant case law, and the intention of the enacting Congresses indicates that appellate review of an order remanding civil rights cases removed to the federal courts pursuant to 1443 is not foreclosed by 1447 (d). The Civil Rights Removal Statute was specifically exempted by statute from the operation of 1447 (d) and its predecessors. Moreover, any interpretation of 1447 (d) which would frustrate an appeal by Negro defendants seeking review of an order closing their access to the federal courts as provided for in 1443 would not only fly in the face of specific Congressional intention that the Civil Rights Removal Statute was to be exempted from the operation of 1447 (d), but would raise serious constitutional questions as to the validity of 1447 (d) under the equal protection guarantees of the Federal Constitution.

A. This Court Has the Power to Review the Orders Remanding the Cases Under the Relevant and Controlling Statutes.

1. The statutory history of 1443 and 1447 (d)

a) Section 1443 is based upon Title 28 U.S.C., 1940 ed. Sec-

tion 74, 36 Stat. 1096. This section is in turn derived from Revised Statute 641. Revised Statute 641 was first enacted as one of the provisions of the Civil Rights Bill of 1866, 14 Stat. at L. 27, chap. 31, Sect. 1. This Bill, first passed prior to the adoption of the Fourteenth Amendment and later reenacted under the authority of that Amendment, was the heart of the overall Congressional "design to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it." Strauder v. West Virginia, 100 U.S. 303.

At the time of the enactment of the original predecessor of 1443, appellate review of any order of the Circuit Court, the then original federal court, lay directly to the Supreme Court. However, the general appellate jurisdiction of the Supreme Court by way of appeal or writ of error was then limited to review of final judgments. Insurance Co. v. Comstock, 16 Wall. 270, 21 L. Ed. 498. Review of an order remanding a case removed to the federal courts pursuant to the Civil Rights Bill of 1866 was therefore available only by way of a petition for mandamus. Chicago and Alton R.R. Co. v. Wiswall, 23 Wall. 507, 23 L. Ed. 103.

b) The Act of March 3, 1875, chap. 137, sect. 5, 18 Stat. 470, 472, provided for the review of an order remanding to state courts by way of appeal or writ of error. This statute applied to all removal statutes, including Rev. Stat. 641, the Civil Rights removal provisions.

c) The Act of March 3, 1887, 24 Stat. 552, 553 (corrected by Act of August 13, 1888, 25 Stat. 433, 434) repealed the provisions of the 1875 statute and generally stated in respect to the removal statutes,

> "no appeal or writ of error from the decision of the circuit court so remanding such cause shall be allowed."

This provision was later reenacted in Title 28 U.S.C. 71, 1940 ed., and later substantially embodied in present 28 U.S.C. 1447 (d).

d) However, the Civil Rights Removal Statute, as differentiated from the general removal statutes, was specifically excluded from the limiting effect of the 1887-88 Acts. Section 5 of the 1887-88 Acts enacted a savings clause in respect to Rev. Stat. 641, the Civil Rights removal provisions. Together with other Civil Rights provisions, the savings clause provided that,

> "Nothing in this section [the general repeal of the 1875 Act], shall be held, deemed or construed to repeal or affect any jurisdiction or right mentioned in Section 641."

This savings clause contained in Section 5 was not repealed by the enactment of the Judicial Code even though not specifically repeated in the codification. Gay v. Ruff, 292 U.S. 25, 29.

2. The case law interpreting the impact of the savings clause upon the right to review an order of remand in a civil rights removal case under 1443 and its predecessors.

It is clear that absent considerations of the impact of the savings clause upon civil rights removal cases, the purpose of Congress in the 1887 Act was to contract the jurisdiction of the federal courts in non-civil rights removal cases by eliminating appellate review. Ex parte Pennsylvania Co., 137 U.S. 451. The savings clause, however, made it amply clear that Congress had no such intentions in respect to the Civil Rights Removal Statute.

The meaning of the savings clause in respect to the availability of appellate review in civil rights removal cases appears to have been discussed in only two opinions, each one a decision

by a Court of Appeals, Cole v. Garland, 107 Fed. 759 (CA 7, 1901) and Snypp v. Ohio, 70 F.2d 535 (CA 6, 1934). The 1934 Sixth Circuit opinion rests solely upon the rationale contained in the 1901 opinion of the Seventh Circuit. Cole v. Garland thus appears to be the only analysis of the impact of the savings clause.

(a) The holding and rationale of Cole v. Garland.

Cole v. Garland involved an attempt by a defendant to remove a state court criminal proceeding to the federal courts pursuant to Section 641. The lower court remanded the proceeding to the state court and the defendant attempted to appeal to the Court of Appeals. In response to the assertion that the Act of 1887 foreclosed his right to review the defendant argued that the savings clause in that Act safeguarded the right to review in civil rights removal cases.

The Court of Appeals responded by pointing out that prior to the Act of 1875 an order remanding a cause was not reviewable by appeal or writ of error because it was not a final order within the meaning of the then existing scope of the appellate jurisdiction of the Supreme Court. Accordingly the Court of Appeals held that since there appeared to be no review available for a remand order under the original civil rights removal statute, prior to 1875, the Act of 1887 did not take anything away from the scope and impact of the Civil Rights Removal Statute by limiting all review. Under this analysis, the Court argued, the denial of a review to a remand order in a civil rights removal case would not violate the specific terms of the savings clause, since the denial of review would not "affect or limit" a prior existing right of review.

Although the rationale of the 1901 opinion in Cole v. Garland is logical in its structure it rests upon a simple misconception

of the actual situation in respect to the availability of review under the original Civil Rights Bill of 1866. The fact of the matter was, as we have pointed out above, that review of orders remanding cases removed pursuant to the Civil Rights Removal Statute was clearly available. The only question was a technical one of form. Since the order remanding such cases was not a "final order" review was not available by way of appeal or writ of error. Review was, however, clearly available by way of a Writ of Mandamus. This was sharply enunciated by the Supreme Court in Chicago and Alton R.R. Co. v. Wiswall, 23 Wall. 507, 23 L. Ed. 103 (1875). In this case Chief Justice Waite held as follows:

> "The order of the circuit court remanding the cause to the state court is not a 'final judgment' in the action, but a refusal to hear and decide. The remedy in such a case is by mandamus to compel action and not by writ of error to review what has been done."

Thus review of an order remanding to a state court was available by way of mandamus to compel the circuit court to "hear and decide" the removed cases at the time of the enactment of the first Civil Rights Removal Statute in 1866. See also: Ex parte Pennsylvania Co., supra, and Gay v. Ruff, supra.

It is clear therefore that the opinion of the court in Cole v. Garland rests upon a misconception of the actual facts. The application of its own rationale would thus require a totally different conclusion. The Garland court concedes that the impact of the savings clause in the 1887 Act is to preserve any existing right of review in respect to the Civil Rights Removal Statute. Since review was in fact available by way of mandamus any interpretation of the 1887 Act, now embodied in 1447 (d), which would totally shut off any appellate consideration would violate the plain words of the savings clause in Section 5 of the 1887 Act.

(b) Ex Parte Pennsylvania Co.

The serious question of the effect of the savings clause of the 1887 Act upon the availability of any form of appellate review of an order of remand in a civil rights removal case thus comes to this Court unhindered by any controlling case law gloss. Those cases such as Ex parte Pennsylvania Co., supra, which hold that the Congressional intent in the 1887 Act was to abolish even the writ of mandamus as an avenue of appellate review deal only with those removal statutes which are not within the four corners of the Section 5 savings clause. Cf. Employers Reinsurance Corp. v. Bryant, 299 U.S. 374. This is apparent not only from the plain words of the savings clause but from the interpretation of the 1887 Act in Ex parte Pennsylvania.

In this decision, only three years after the passage of the 1887 Act, the Court pointed out that the general Congressional intent was to limit and restrict the exercise of federal jurisdiction. This then explains the purpose of the savings clause. If the general intention of the statute was to limit federal jurisdiction, Congress was extremely anxious to make it clear that the exercise of federal jurisdiction in one area, namely the enforcement of the Fourteenth Amendment, would not be affected by the general limiting scope of the statute. This is the explanation for the statutory direction that nothing contained in the 1887 Act was to be interpreted as repealing or affecting any right pertaining to the Civil Rights Removal Statute.

3. The Congressional Intention and Public Policy Considerations Underlying the Operation of the Savings Clause.

The Congressional concern for the Civil Rights Removal Statute is perfectly understandable. While the general removal

statutes dealt solely with questions of a convenient forum for the litigation of essentially private rights, the Civil Rights Removal Statutes were originally enacted to vindicate broad public rights of a pressing national importance. Since the purpose of the 1887 Act was generally to restrict the utilization of the federal courts for removal proceedings of a primarily private nature it became important for Congress to make it quite clear that this restriction did not apply where removal touched problems of a fundamentally different nature, the vindication of the fundamental rights of freedom and equality guaranteed to the Negro by the Fourteenth Amendment. This purpose Congress accomplished through the savings clause in Section 5 of the 1887 Act.

Section 5 therefore exempted from the generally restrictive impact of the legislation the jurisdiction vested in the federal courts by the Civil Rights Removal Statutes. The plain words of the savings clause require a construction of the 1887 Act in such a manner as to refrain from affecting or limiting any of the rights involved in the invocation of federal jurisdiction provided for in the original provisions of the Civil Rights Bill of 1866 and subsequently incorporated in 641 of the Revised Statutes.

It is highly significant in this respect that whatever original restrictions existed upon the right to appeal an order of remand were purely of a procedural nature. There were no policy considerations militating against a right to appellate review of such orders. The only considerations were technical in nature and went to the form of the review, rather than to the substance of the review. Chicago and Alton R.R. Co. v. Wiswall, supra. This is understandable. A Congress which viewed the Civil Rights Bill of 1866 as a great charter of liberty designed to protect the newly emancipated race, The Civil Rights Cases, supra,

would hardly have tolerated a situation in which the important right to turn to the federal courts for protection could be virtually nullified by a denial of any right to review an order remanding proceedings to the state courts.

In 1866 the Congress viewed the Civil Rights Removal Statute as an essential ingredient in a program of full enforcement of the sweeping guarantees of liberty and equality enunciated in the Fourteenth Amendment. Tennessee v. Davis, 100 U.S. 257, 25 L. Ed. 648; Strauder v. West Virginia, supra. It is axiomatic that any fundamental right essential to the protection of such basic Constitutional aims as equality and freedom would hardly be left to the sole unreviewable authority of a single federal judge, himself more than possibly influenced by the very passions and prejudices which required resort to the right to removal in the first instance.

From the first years of its enactment this legislation, destined to play an essential role in the overall scheme of Congressional enforcement of the Fourteenth Amendment, was protected by the availability of appellate supervision through the high prerogative Writ of Mandamus. From 1875 until 1887 this original form of appellate review was supplemented by statutory appeal and writs of error. When the Congress in 1887 came to the conclusion that in the many instances of non-civil rights removals based upon diversity of citizenship or the presence of a federal question, federal jurisdiction should be limited by eliminating appellate review of an order of remand, it specifically exempted the Civil Rights Removal Statute from this thrust. In doing this the Congress was reasserting again the high public importance it attached to the preservation of the civil rights removal jurisdiction.

It is within the spirit of the original Act of 1866 and the savings clause of 1887 that the present statutes must be construed. The savings clause in Section 5 of the Act of 1887 preserved the substance of appellate review originally available by way of mandamus in orders of remand in removal cases arising under the Civil Rights Removal Statute. Accordingly Section 1447 (d) must be presently construed as not foreclosing any appellate review of an order of remand in a proceeding arising under Section 1443.

B. A Construction of 28 U.S.C. 1447 (d) Which Would Foreclose Any Appellate Review of an Order Granting Remand of Proceedings Removed Under 28 U.S.C. 1443 Would Render that Statute Unconstitutional.

1. The effective denial of any opportunity for appellate review would deprive Negro petitioners for removal of the equal protection of the law.

Any construction of 1447 (d) which might result in foreclosing Negro petitioners for removal under the provisions of Section 1443 from appellate review of an order remanding their cases to a state court would effectively deprive these petitioners of the equal protection of the laws.

Such a construction would render the statute violative of the Fifth Amendment to the Federal Constitution. Section 1447 (d) and 1443 are federal statutes and thus governed by the Fifth Amendment rather than by the explicit guarantees of equal protection of the laws contained in the Fourteenth Amendment. However, the Supreme Court has authoritatively held that in the area of discriminatory action based upon race the Federal Government will be held under the Fifth Amendment to a standard no less rigid than that imposed upon the States by the Fourteenth Amendment. Bolling v. Sharpe, 347 U.S. 497; see also Korematsu v.

United States, 323 U.S. 214. The unequal application of the laws in respect to Negro citizens "constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause." Bolling v. Sharpe, supra.

If Section 1447 (d) could be construed as cutting off all possible appellate review of an order remanding cases removed to the federal courts pursuant to the Civil Rights Removal Statute, the result would be a shocking deprivation of the equal protection of the laws. Under such an interpretation those petitioners for whom Congress specifically enacted the statute, members of the Negro race, see Strauder v. West Virginia, supra, would be completely denied any opportunity to review a rejection of their assertion of federal jurisdiction. On the other hand, the white state officials from whom these Negro petitioners seek the protection of the federal courts would continue to have their normal right to challenge a denial of a motion to remand on their appeal in chief from any judgment obtained in the federal court. Ex parte Roe, 234 U.S. 70; Edrington v. Jefferson, 111 U.S. 770; Johnson v. Butler Bros., 162 F.2d 87; Morgan v. Kroger Grocery and Baking Co., 96 F.2d 470.

The failure to afford any appellate review from the granting of a motion for a remand would result in the following posture of the matter: The Negro defendants seeking removal would have no right to obtain a federal review of their right to invoke the jurisdiction of the federal courts while the predominantly white state or city governments would have a full opportunity to obtain review of any order sustaining federal jurisdiction. Such striking discrimination in access to judicial relief would violate the most elementary concept of the requirement of the equal protection of law. The Slaughterhouse Cases, 16 Wall. 36, 21 L. Ed. 394;

The Civil Rights Cases, supra; Strauder v. West Virginia, supra.

The fundamental thrust of the War Amendments was the elimination of discrimination in the enforcement of the law. Section 641 itself, the predecessor of 1443, was designed to guarantee that "the law in the States shall be the same for the black as for the white," Strauder v. West Virginia, supra. And as the Court said further in Strauder, the words of the Fourteenth Amendment contain "a necessary implication of a positive immunity, or right, most valuable to the colored race...the right to exemption from legal discrimination implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." Strauder v. West Virginia, supra.

From the first of the landmark decisions interpreting the scope of the guarantees of liberty enacted in the War Amendments to the most recent, compare The Slaughterhouse Cases, supra (1873) and Monroe v. Pape, 365 U.S. 175 (1961), the prohibition against unequal treatment in the enforcement of a legal right has always been in the center of any discussion of the equal protection and due process clauses. Limitations upon the ability of the Negro to enforce legal rights otherwise available to whites was the classic hallmark of a system of servitude and one of the principal "badges and indicia" of slavery. Civil Rights Cases, supra.

But a construction of the Civil Rights Removal Statute which would eliminate any possibility of appellate review of an order remanding while preserving the right to review of an order denying remand, see Ex parte Roe and cases cited supra, would result in the most flagrant discrimination against the class of Negro

citizens in the enforcement of a judicial right itself designed for their protection.

The removal provisions in the Civil Rights Bill of 1866, later reenacted as Revised Statute 641, were designed as an important building block in the Congressional edifice constructed to implement and enforce the policies and commands of the Thirteenth and Fourteenth Amendments. Strauder v. West Virginia, supra; Ex parte Virginia, 100 U.S. 313. As the Court said in Strauder, the removal jurisdiction in civil rights cases contained in 641 was primarily designed, as was the Amendment itself, to guarantee that "the law in the States shall be the same for the black as for the white." Strauder, supra at p. 307. The Civil Rights Removal Statute is in the deepest sense a codification of the command of the Amendment that equal justice shall be afforded the Negro. The Court in Strauder made that amply clear:

> "This Act [641] puts in the form of a statute what had been substantially ordained by the constitutional amendment. It was a step towards enforcing the constitutional provisions. Section 641 was an advanced step, fully warranted, we think, by the 5th section of the Fourteenth Amendment."

It would be unthinkable that in a statute specifically designed to eliminate inequality in the enforcement of judicial rights inequality could be engrafted into the statute itself by judicial construction. Yet a construction of 1447 (d) which would sanction the total elimination of any appellate review of a remand order would have that precise effect. It would be patently absurd to attribute to the Congress which drafted the War Amendments and the entire structure of civil rights legislation an intention to allow gross inequality in the ability to enforce rights granted for the very purpose of eliminating inequality in

the administration of law.

As we have seen in fact no such discrimination in the right to enforce the Civil Rights Removal Statute was present in the first years of its existence. The right to obtain appellate review of an assertion of federal jurisdiction was equally available to defendants objecting to a remand order by way of mandamus, Chicago and Alton R.R. Co. v. Wiswall, supra, as it was to plaintiffs objecting to the assertion of jurisdiction by way of an appeal from any final order in the cause in the federal court. Ex parte Roe and cases cited supra. To ignore the impact of the savings clause in the 1887 Act and to construe that Act and its successor, 1447 (d), as eliminating the Negro defendant's right to review while leaving undisturbed the white prosecutor's right to review would be to change a statutory instrument designed to achieve equality in the enforcement of law into its opposite. Any such construction would render the statute unconstitutional as violative of the Fifth Amendment. Bolling v. Sharpe, supra.

It may be argued that the constitutional implications of the 1901 decision of the Seventh Circuit in Cole v. Garland, supra, are now raised some sixty years after that opinion. It is sufficient to point out that only recently have the courts restored the Fourteenth Amendment and the panoply of civil rights statutes to their original strength and vitality. Compare Plessy v. Ferguson, 163 U.S. 537 with Brown v. Board of Education, 347 U.S. 483. See Monroe v. Pape, supra. To the degree that Cole v. Garland would sanction an unconstitutional construction of the Civil Rights Removal Statute that 1901 opinion will not be afforded persuasive weight. See Brown v. Board of Education, supra.

2. Any construction of 1447 (d) which would result in a failure to grant equally to all a right to review would render the statute violative of equal protection of the law and due process of law.

Only recently the Supreme Court, has established in a series of important decisions that the denial of an equal opportunity to appellate review violates the equal protection and due process guarantees of the Fourteenth and Fifth Amendments. Draper v. Washington, ____U.S.____, 83 S. Ct. 774; Douglas V. Green, 363 U.S. 192; McCrary v. Indiana, 364 U.S. 277; Eskridge v. Washington State Board, 357 U.S. 214; Griffin v. Illinois, 351 U.S. 12: cf. Coppedge v. United States, 369 U.S. 438.

A construction of 1447 (d) which would sanction the total elimination of any right of a defendant in a state criminal trial to seek review of an order remanding the case while leaving untouched the plaintiff's ability to seek review after final judgment in the federal court would raise serious questions of constitutionality under the principles enunciated in Draper v. Washington and cases cited supra.

It is fundamental that once an opportunity for appellate review is afforded the structure for review must meet the standards of the equal protection and due process clauses. Burns v. Ohio, 360 U.S. 252. Denying any right to appeal an order of remand, while permitting appeal of a denial of remand through review of the final judgment in the Federal court would be "an invidious discrimination" inconsistent with the guarantee of equal protection and due process of law. Eskridge v. Washington State Board; Griffin v. Illinois; Burns v. Ohio; all supra.

* * * * * * * * * * * * *

The denial of any appellate review of a remand order in a civil rights removal proceeding would not merely render the

statute unconstitutional under the Fifth Amendment. It would in effect deprive Negro citizens of any opportunity to utilize the important rights granted to them by Congress in the Civil Rights Removal Statute.

It has become increasingly important for the federal courts to preserve the vitality and efficacy of those statutes designed by Congress to implement and enforce the fundamental guarantees of Freedom and equality set forth in the Thirteenth and Fourteenth Amendments. Congress felt keenly the necessity of providing a forum free from the control and influence of local and state white power groups in which federal rights under attack in such state proceedings could be fairly and effectively protected. This was the significance of the removal provisions enacted originally in the Civil Rights Bill of 1866 and presently embodied in 28 U.S.C. 1443. See Strauder v. West Virginia, supra.

But if a Civil Rights Removal Statute is to have any vitality, if it was to play any role in protecting the Negro in his quest for the implementation of the constitutional promise of equality, it is essential that some opportunity for appellate review be available so that access to the Federal Court not be permanently cut off at the threshold of jurisdiction by District Court Judges, themselves often subject to the very local pressures and passions which the statute seeks to alleviate.

The need for this opportunity for appellate review was recognized from the outset. Whether the review was by mandamus from 1866 through 1875, or by appeal and writ of error from 1875 through 1887, review was always available from an order denying federal jurisdiction. And as we have seen in 1887 itself when review was eliminated in non-civil rights removal situations the savings clause of Section 5 carefully protected the existing right

to review in civil rights removal cases.

However, in the years following 1887 the Civil Rights Removal Statutes, like many of the other civil rights provisions, compare Monroe v. Pape, supra, have been hampered and often rendered ineffective by judicial limitations which misconceived the very purpose of the Amendments themselves. See Brown v. Board of Education, supra. Certain of these limitations merely require appellate supervisory examination to restore the statute to the effective protector of federal rights it was originally designed to be. But unless the substance of appellate review which was originally available by way of mandamus is held to be available today, Section 1443 may well become an empty shell.

Three Congresses, in 1866, 1875 and 1887, reaffirmed the clear intention that the jurisdiction of the Civil Rights Removal Statute should remain inviolate as an essential judicial protection to the rights and liberties of the Negro. Yet the misconception embodied in Cole v. Garland, supra, unless rectified, may well result in frustrating this clear Congressional intent. If the availability of the Civil Rights Removal Statute in situations it was originally designed for rests solely and exclusively in the hands of local judges its utility will remain largely academic. Local judges are understandably often influenced by the very pressures and passions the statute was designed to alleviate. Only the substance of appellate review can preserve for Negro citizens and all others faced with prosecutions based upon the exercise of federal rights or threatened with trials in courts which will not give equal justice, the right to a forum capable of protecting and defending Constitutional liberties.

We have demonstrated here that a construction of 1447 (d) which would cut off all effective appellate review of an order

remanding a case removed pursuant to the Civil Rights Removal Statute, would render these statutes unconstitutional in violation of the Fifth Amendment. In avoiding a construction which would render the statutes unconstitutional and in reaffirming the existence of an appellate review which was an essential attribute of the original statute, this Court would give powerful support to the intention of the enacting Congress that this statute should be an effective and valuable instrument in implementing and enforcing the fundamental guarantees of liberty and equality proclaimed in the Fourteenth Amendment.

POINT TWO

THE DISTRICT COURT HAD THE POWER AND DUTY TO HEAR AND DECIDE THE CASES DULY REMOVED PURSUANT TO TITLE 28 U.S.C. 1443, SUBSECTIONS (1) AND (2).

A. Removal was Proper Under Subsection (1) of 28 U.S.C. 1443. The District Court had Jurisdiction to Hear and Decide the Cases.

1. The facts reveal a clear case for removal under subsection (1).

The petitions for removal meet the requirements for federal jurisdiction under subsection (1) of 28 U.S.C. 1443. This subsection provides:

> "Any of the following civil actions or criminal prosecutions, commenced in a State court, may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; . . . "

It can hardly be questioned that the petitioners for removal,

in demonstrating in the streets of Danville, have been attempting to obtain rights guaranteed to them by the Equal Protection Clause of the Fourteenth Amendment. Their objectives have been, and continue to be, the desegregation of public facilities as well as the elimination of racial discrimination in employment by the City itself. These are goals embracing the highest order of Constitutional sanctity. The Negro citizens of Danville in exercising their right to demonstrate, assemble, and petition are utilizing "constitutionally privileged means of expression to secure constitutionally guaranteed civil rights". Cf. NAACP v. Button, _____ U.S. _____, 83 S.Ct. 328, 343. These means and objectives are guaranteed by the Fourteenth Amendment, a law of the United States providing for the equal civil rights of citizens, In re Neagle, 135 U.S. 1, as well as by Title 42 U.S.C. 1981 et seq., also laws providing for equal civil rights.

But the facts underlying these removal petitions reveal beyond any doubt that the petitioners are unable to enforce in the Corporation Court of Danville the rights they have to seek to obtain the constitutional goals they have been guaranteed. The United States was permitted to intervene as amicus curiae in the District Court. Its conclusion that "a fair trial cannot be had in the Corporation Court" rested upon the evidence adduced at the June 24 and 25 hearings revealing in the opinion of the intervenor "a set of facts which is rather unusual for the middle of the Twentieth Century". The memorandum for the United States as amicus curiae summarized this "set of facts" as follows:

> "The evidence adduced at the hearing in Danville on June 24-25, 1963, reveals, inter alia, that Judge Aiken, who will hear all of the pending contempt charges, was himself involved in attempting to disperse crowds of demonstrators at an earlier date. He also testified that he feared that trouble or violence of one kind or another might occur as a result of the demonstrations; indeed,

at one point in his testimony he said that he considered that certain types of demonstrations which he had observed amounted to 'violence', and were 'sinister' and 'menacing', although no actual physical violence occurred. In view of this evidence, it is difficult to believe that petitioners will be able to obtain a fair trial before Judge Aiken. And if they cannot do so, whatever defense they may wish to assert grounded upon their right to demonstrate for the purpose of obtaining the equal protection of the laws may well go for nought in Judge Aiken's court. If that is true, then, we submit, petitioners should be classified as persons who are 'denied or cannot enforce in the courts of [the] State a right under any law providing for . . . equal civil rights . . .'

Indeed, there is much more involved here than the mere denial of a fair trial. The trial itself is being conducted in a most unjudicial atmosphere. The Judge conceded that he has been armed with a pistol which he removes only when reaching his office. One witness testified in fact that Judge Aiken was armed on the bench. However that may be, the fact remains that it is common knowledge that the trial Judge is armed, and this alone is bound to intimidate Negro citizens of Danville, to reduce their expectations of obtaining a fair trial in the Corporation Court, and thus to interfere with their campaign for equal civil rights. Moreover, the evidence reveals that Negro counsel, male and female, have been searched upon entering the courtroom; that the courtroom has been closed to the public (except to the press); that perhaps 40-odd armed police officers were stationed throughout the courtroom during the two contempt trials which have already taken place; that the Judge had prepared, in advance of trial, a written memorandum of his decision finding the first two defendants guilty of contempt; and that Judge Aiken refused to examine into the contention made upon motion of the defendants just prior to the first trial, that the Corporation Court had no jurisdiction to proceed because, as this Court subsequently held on June 25, 1963, filing of the removal petitions transferred the cases to this Court and ousted the Corporation Court of any power to act upon them. This conduct of Judge Aiken surely suggests that he will be somewhat unreceptive to arguments grounded upon controlling federal law. Furthermore, Judge Aiken refused to release on bail, pending appeal, the two defendants convicted of contempt. Since the sentences imposed are relatively short, this ruling -- which Judge Aiken apparently intends to apply to all the pending contempt cases -- effectively denies appellate review of his judgments of guilt. And, finally, the practice of imposing 45 and 60-day jail terms in contested cases, while imposing either no confinement as in one case, or only a two-day term, as in the second case, upon the two defendants who pleaded guilty, simply exacerbates the situation by suggesting that those who choose to assert their rights will suffer the consequences.

> The combination of a trier of fact who has apparently prejudged the issues and was a participant in the events culminating in the very charges to be tried, considered together with the general atmosphere of the proceedings and its inevitable results, makes it quite clear, it seems to us, that a fair trial cannot be had in the Corporation Court. But that is not all. It is not simply that whatever rights defendants have to demonstrate for the equal protection of the laws will be disregarded in the contempt trials. The situation is further aggravated by the fact that racial antagonism lies at the root of this denial. The entire controversy now before this Court stems from the conflict over Negro equality, and the proceedings in the Corporation Court, which are here challenged, are a direct result of this conflict. We do not suggest that Judge Aiken is racially prejudiced against the defendants; but a Court would have to close its eyes to the realities not to notice that the peculiar proceedings in the corporation court are the direct consequence of this racial conflict. Judges, and especially federal judges, are not 'forbidden to know as judges what [they] see as men.' Hu An Kow v. Nunan, 5 Sawy. 552, 560, Fed. Cas. No. 6546 (1879). The denial of a fair trial in these circumstances, then, is in the most fundamental sense grounded upon race.
>
> Under these circumstances, if the original intention of section 1443(1) were to govern these cases, we think they would be properly removed."

We agree with the Intervenor-United States that this is truly a "remarkable case, and one not likely to be duplicated very often". The evidence adduced at the hearings proved beyond any doubt that petitioners could not possibly enforce their equal right to a fair trial in the Corporation Court. The testimony of Judge Aiken was particularly revealing. Called as a witness by the City, the State court judge testified that prior to the issuance of the ex parte decree he had concluded and so told Negro citizens that their exercise of the constitutional rights of assembly and of the right to petition for a redress of grievances was improper and not a permissible or desirable way of achieving their objectives.

But this was the heart of the issue to be tried in the subsequent criminal prosecution in his court. The propriety of the exercise of these constitutional rights was the very core of the

prosecutions. Yet this issue was predetermined by the State court judge. It is hardly a surprise therefore that the State court judge did not permit petitioners to show in the first trials that their acts were constitutionally protected. Further-m ore the State court judge conceded in his testimony that he had carefully considered, prepared, and written his decision in the first prosecution prior to the actual trial and prior to hearing the evidence presented. But what is perhaps most disturbing was the evidence of both the State court judge and other witnesses which revealed an atmosphere of fear negating the possibility of equal and impartial justice under the law. The State court judge testified that he wore a gun at most times, and although he had received no threats nor had the police, he was constantly accompanied by armed officers. Negro attorneys and defendants were searched upon entering the State courtroom, and the courtroom was constantly filled with police.

When the central constitutional issues have been predetermined prior to trial, when a courtroom becomes an armed fortress, when judicial officers wear guns and are accompanied constantly by armed officers, when lawyers are physically searched in a courtroom, when decisions are written and decided before trial, is it possible to say that impartial justice can be done? To state the question is to answer it. We respectfully suggest that perhaps no case has ever come before a federal court so strongly invoking the congressional policies underlying the right to remove State prosecutions under subsection (1) of Section 1443.

2. Case law interpreting subsection (1).

a) Appellees rely upon language in certain Supreme Court opinions implying that a case may be removed only when equal

rights are denied by a state statute. See Virginia v. Rives, 100 U.S. 313; Gibson v. Mississippi, 162 U.S. 565; Kentucky v. Powers, 201 U.S. 1. If such cases are to be read as establishing an inflexible rule restricting removal under 1443 (1) solely to situations involving a State statute it may well be that the last case analyzing the scope of the statute, Kentucky v. Powers, supra, decided over fifty years ago must be approached in the spirit of the new vitality brought to the Fourteenth Amendment by the recent decisions of the Court. Compare Plessy v. Ferguson, supra, with Brown v. Board of Education, supra. Many commentators have urged that the restrictive case law gloss of Rives and Powers no longer is persuasive in limiting the original scope and purpose of the Civil Rights Removal Statute. See Note, 19 St. John's Law Rev. 43, 47; 54 Harv. L. Rev. 685.

The legislative history of 1443 (1) would indicate that the original Congressional intention was not to limit civil rights removal to cases in which a State statute was involved. Thus Section 3 of the Act of 1866, the legislative predecessor of 1443, allowed removal for denial of or inability to enforce "in the courts or judicial tribunals of the State or locality where they may be any of the rights secured to them by the first section of this act . . ." (emphasis added). Two conclusions follow. First, the language referring to inability to enforce rights in the "locality" of a State suggests that local prejudice in addition to a statute would be a ground for removal. Second, the rights "secured to them by the first section" of the Act of 1866 included at that time, and still includes (42 U.S.C. 1981) the right "to the full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens," (emphasis added), and the right to "be subject to like punishment,

pains, and penalties, and to none other."

In short, the original statute guaranteed not only equal laws, but equal "proceedings" as well; indeed, the rights secured by section 1 of the Act of 1866 (now 42 U.S.C. 1981) extend all the way to the sentencing stage, protecting Negroes from unequal punishments.

The legislative history of the Act of 1866 lends additional support to the view that it was not only statutory denials of equal rights that were grounds for removal. Thus, Senator Trumbull, the manager of the Civil Rights Bill which became 14 Stat. 27, said on the floor (Cong. Globe, 39th Cong., 1st Sess., p. 1759):

> "If it be necessary in order to protect the freedman in his rights that he should have authority to go into the federal courts in all cases where a custom prevails in a State, or where there is a statute-law of the State discriminating against him, I think we have the authority to confer that jurisdiction under the second clause of the [Thirteenth] Amendment. . . ."(emphasis added).

In Senator Trumbull's view, then, removals were not limited to situations where a state statute discriminated against Negroes, but extended to other situations as well.

And Senator Wilson, defending the bill, was apparently of the same view. He declared that under the Bill freedmen ". . . shall live under the same laws, be tried for their violation in the same manner, and if found guilty punished in the same manner and degree" (emphasis added). Cong. Globe, 39th Cong., 1st Sess., p. 603. Again, his statement indicates that the bill protected not only against unequal laws but against unequal judicial proceedings, whatever the laws of the State might declare on their face.

b) However, even the more restrictive holdings of Virginia

v. Rives, supra, and Kentucky v. Powers, supra, support the conclusion that removal was proper under 1443 (1) under the facts of these petitions.

In the line of cases beginning with Virginia v. Rives and ending with Kentucky v. Powers the Court was concerned with the problem that a petitioner seeking removal of a case before trial on the ground that he could not obtain a fair trial in the State court would have to swear to the existence of prospective facts. In Rives the Court pointed out that the removal statute required a petitioner to swear to the existence of a state of facts which would bring the statute into play. Thus when the complaint was the inability to obtain a fair trial the allegations might be speculative. The underlying rationale was made clear in Virginia v. Rives, supra at 320:

> "In all such cases [wherein a Negro is denied the equal protection of the laws by statute] a defendant can affirm, on oath, before trial, that he is denied the equal protection of the laws or equality of civil rights. But in the absence of constitutional or legislative impediments he cannot swear before his case comes to trial that his enjoyment of his civil rights is denied to him. When he has only an apprehension that such rights will be withheld from him when his case shall come to trial, he cannot affirm that they are actually denied, or that he cannot enforce them." (emphasis added)

The issue therefore posed by the early cases was to set guideposts which could indicate the degree of certainty required to affirm in a petition that a fair trial in a State court would be in fact denied. See Virginia v. Rives and cases cited supra. Thus among the indicia which the Court felt would show the necessary degree of certainty that a fair trial would be denied were the existence of statutes or constitutional provisions affecting the ability to enforce the right to a fair trial in the State court. See Virginia v. Rives and cases cited supra. The concept

underlying these decisions was to attempt to make sure that removal occurred only in the face of a reasonable certainty that equal rights could not be enforced in the State court. Thus an analysis of all of the Supreme Court opinions from Rives through Powers indicates that the rationale underlying the gloss imposed upon subsection (1) is the requirement that the circumstances surrounding an invocation of subsection (1) must indicate a reasonable certainty that a fair trial will in fact be denied to defendants in the pending State court proceedings.

But all of the circumstances surrounding the present petitions indicate beyond a shadow of a doubt the existence of requisite degree of certainty required to ground removal jurisdiction under subsection (1). Here, as we have previously discussed the trial judge has already conducted two trials on substantially the same charges now pending against all of the removers. He has indicated how he will treat all of the remaining cases. That establishes, in as certain a manner as the statute may require, that the rights of the removers in the remaining trials will be denied. Thus, the rationale of Virginia v. Rives directly supports the conclusion that the removals in this case are proper. If "certainty" is the test which the case law gloss places upon subdivision (1) of 1443 the facts in this record bring these petitions squarely within the holdings of Rives and Powers.

c) Furthermore Virginia v. Rives and the following cases turn upon the assumption that deprivations of equal rights which occur during a trial may be corrected by the State appellate process. But here, where Judge Aiken has effectively denied an appeal, and apparently intends to do so in the remaining cases, that avenue of redress is closed to the removers. But even if

the denial of bail were not the pattern in subsequent trials the recent order requiring a change of venue over the defendants' objections resulting in a further inability to enforce their equal rights in the State court is not subject to correction by the State appellate process.

d) Jurisdiction under 1443 (1) is proper even within the language of Virginia v. Rives requiring the presence of a statute depriving petitioners of equal rights. The ex parte decree which is the basis of these criminal prosecutions is legally equivalent to a statute for the purposes of removal jurisdiction under subsection (1). This sweeping injunction is under the circumstances of this case equivalent to a "statute" within the meaning of the rationale of Rives and the subsequent cases.

A statute is a command which regulates conduct. This injunction is precisely a command regulating conduct. The statutory character of this injunction was reinforced by the City when it was virtually reenacted in the subsequent ordinance of June 14th. The State court judge himself testified that he thought the conduct of the petitioners had to be regulated.

The entire history of these proceedings reveals the fact that the City officials have treated the temporary and permanent injunctions as the major statutory device in their efforts to regulate the conduct of the Negro citizens of Danville. See discussion in PART ONE, supra. Compare Congress of Racial Equality v. Douglas, 318 F.2d 95 (CA 5, 1963).

Furthermore the use of the word "unlawful" in the decree shows that this injunction includes a restatement and specification of prior statutes. With one exception (paragraph (e)), each of the paragraphs prohibits conduct only if it is "unlawful". In order to determine whether any given conduct is prohibited by

the restraining order it is necessary to refer to statute laws and ordinances of the State of Virginia. Since that is so, the restraining order is in part restatement of whatever laws of Virginia exist dealing with the conduct prohibited by the restraining order.

Finally, the Supreme Court has recently held in Lombard v. Louisiana, _____U.S._____, 83 S.Ct. 1132 (May 20, 1963) that statements of officials are to "be treated exactly as if it (the city) had an ordinance prohibiting such action." If statements of city officials are to be treated as a statute for the purpose of the Fourteenth Amendment the command of this sweeping injunction must likewise be considered equivalent to a statute for the purpose of subsection (1).

In Lombard the Court stated:

> "But we need not pursue this inquiry further. A State, or a city, may act as authoritatively through its executive as through its legislative body. See Ex parte Virginia, 100 U.S. 339, 347. As we interpret the New Orleans city officials' statements, they here determined that the city would not permit Negroes to seek desegregated service in restaurants. Consequently, the city must be treated exactly as if it had an ordinance prohibiting such conduct. We have just held in Peterson v. City of Greenville, ante, that where an ordinance makes it unlawful for owners or managers of restaurants to seat whites and Negroes together, a conviction under the State's criminal processes employed in a way which enforced the discrimination mandated by that ordinance cannot stand. Equally the State cannot achieve the same result by an official command which has at least as much coercive effect as an ordinance. The official command here was to direct continuance of segregated service in restaurants, and to prohibit any conduct directed toward its discontinuance; it was not restricted solely to preserve the public peace in a nondiscriminatory fashion in a situation where violence was present or imminent by reason of public demonstrations. Therefore here, as in Peterson, these convictions commanded as they were by the voice of the State directing segregated service at the restaurant, cannot stand. Turner v. City of Memphis, 369 U.S. 350."

The ex parte injunction which governs these prosecutions is a clear "official command" and as in Lombard the existence of

this command requires the conclusion that the "city must be treated exactly as if it had an ordinance prohibiting such conduct."

Under the doctrine of Rives the presence of such a statute creates the type of certainty that petitioners will not receive a fair trial as to call into play the removal provisions of subsection (1), for the record is clear that this sweeping injunction was designed to and did operate in a discriminatory manner. The decree is discriminatory on its face, contrary to the equal protection clause of the Fourteenth Amendment. The injunction does not apply to all the citizens of Danville but only to the four named Negro respondents-defendants and "their servants, agents and employees, their attorneys and all other persons acting in concert therewith." In short as the testimony indicates, the decree was designed and did in fact restrict the Fourteenth Amendment liberties and privileges of the members of the Negro race in the City of Danville. See Hague v. CIO, 307 U.S. 496; Lombard v. Louisiana, supra; Peterson v. Greenville, 83 S.Ct. 1119.

The injunction is patently discriminatory. The avowed and confessed purpose of the City when it applied for the decree was to put an end to the demonstrations which had commenced about a week earlier. The State court judge testified that, even before the injunction had been requested, he had told the Negroes that the demonstrations were wrong and would not achieve their ends. The purpose of the decree was clearly to restrict the exercise of Fourteenth Amendment rights by the Negro citizens of Danville.

The City has argued that the injunction is neutral on its face and that it applies to all, Negro and white alike. But none can seriously doubt that the purpose of the injunction was to

inhibit the free exercise of constitutional rights by Negro citizens. Significantly, even taken at its face the injunction contradicts the contention of the City. The injunction does not apply to everybody in Danville regardless of color; it is specifically limited to the four named defendants (all Negro), and also "their servants, agents, and employees, their attorneys and all other persons acting in concert therewith." In short, it is directed primarily against the City's Negro citizens.

Removal is thus properly grounded on 28 U.S.C. 1443 (1) under Rives and Powers. Petitioners are faced with the certainty that they cannot enforce their equal rights to a fair trial in the State courts during a criminal prosecution because they are being prosecuted under an injunction which is equivalent to a statute discriminatory on its face and as applied on the basis of race and color.

B. Removal was Proper Under Subsection (2) of 28 U.S.C. 1443. The District Court had Jurisdiction to Hear and Decide the Cases.

1. The facts reveal a clear case for removal under subsection (2).

The petitions for removal meet the requirements for federal jurisdiction under subsection (2) of 28 U.S.C. 1443. This subsection provides:

> "Any of the following civil actions or criminal prosecutions commenced in a state court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> * * * * *
>
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

a) The testimony adduced establishes beyond any question that petitioners are being prosecuted for acts under color of authority of laws providing for equal rights.

The record shows that petitioners walked down the street in a peaceful fashion, prayed, sang, chanted for freedom, and petitioned. In a word they were exercising their First Amendment right to assemble and to petition for a redress of grievances. Their objective was to secure the desegregation of public facilities and the elimination of racial discrimination in the City of Danville. These citizens were petitioning the City under color of authority of the Fourteenth Amendment for that equal protection of the laws which the Supreme Court has time after time reiterated the states must guarantee to all citizens, Brown v. Board of Education, 347 U.S. 483.

The "law" from which their authority to "act" was derived is the Constitution of the United States and in particular the First and Fourteenth Amendments. The Constitution is a "law" of the land within the meaning of the federal statutes. Standard Computing Scale Co. v. Farrell, 249 U.S. 571, 577 (1919); In re Neagle, 135 U.S. 1 (1889); Williams v. Bruffy, 96 U.S. 176, 183 (1877); Stoffil v. W.J. McCahan Sugar Ref. Co., 35 F. 2d 602, 630 (E.D. Pa. 1929). The Constitution is thus a law providing for "equal rights" within the meaning of Section 1443 (2). Moreover, petitioners acted under color of the numerous federal statutes such as 18 U.S.C. 241, 242; 28 U.S.C. 1343; 42 U.S.C. 1985, 1986, 1987, 1988.

The plain words of Section 1443 (2) merely require a showing of a "color" of authority derived from a law providing for equal rights. It does not require either a showing of express authority or the absolute proof of such authority. If citizens colorably

act under such authority this is sufficient within the meaning of the statute. See Whittington v. Johnston, 201 F.2d 810 (CA 5). It is clear that the gravamen of the acts of the petitioners was the exercise of First Amendment rights to free speech, assembly and the right to petition for redress of grievances. The City really does not contest that these acts were engaged in under "color" of the Constitution. The City argues in essence that under the circumstances of the situation these rights ought not to be constitutionally protected. This misconceives the jurisdictional problem. As long as the acts were undertaken "under color of authority derived from" the Constitution the prosecutions are removable to the federal court under Section 1443 (2).

b) The City introduced some evidence purporting to show certain isolated acts of violence unrelated to acts of the petitioners. However these acts were concededly not connected with the peaceful exercise of constitutional rights by the petitioners. See Statement of Facts, supra. But more important this evidence was completely irrelevant. The City had the burden of showing that the acts for which petitioners were prosecuted were not performed under color of authority of laws providing for equal rights. Any contention of the City that it did not think this was a "proper" way to achieve constitutional ends is of course not germane to the jurisdictional issue. Nor is it relevant that acts consisting of the peaceful exercise of constitutional rights might have engendered hostility or even acts of violence on the part of others. Cf. Terminiello v. City of Chicago, 337 U.S. 1, or that the acts might have had such secondary effects as littering the streets or obstructing traffic. Cf. Cantwell v. Connecticut, 310 U.S. 296; Marsh v. Alabama, 326 U.S. 501; Tucker v. Texas, 326 U.S. 517; Thomas v. Collins, 323 U.S. 516; Martin v.

Struthers, 319 U.S. 141. The only relevant question is whether the acts undertaken and for which the petitioners are being prosecuted were undertaken under "color" of constitutional or statutory authority. Once this is established the statute is clear, the prosecution may be removed. The actual question of whether the acts are protected or may be punished is only then placed in issue in the subsequent trials. The jurisdictional issue is solely the presence of colorable authority.

c) There appears to be only one decided case dealing directly with Section 1443 (2), Hodgson v. Millward, 12 Fed. Cases No. 6, 568, 3 Grant Cases 418 (C.C. Pa. 1863). This case concretely illustrates the meaning of "color of authority." A federal officer had entered Millward's land under color of a Presidential order. Though there were doubts that the order was formally correct and whether the President would properly issue it, nevertheless removal was allowed. The validity of the order, the court held, "constitutes the very question to be tried and determined [in the federal court]. The order was color of authority, whether the substance [of authority] existed or not".

Similarly here the question as to whether the acts of petitioners were in fact protected against prosecution by the Constitution "constitutes the very question to be tried and determined" in the federal court. Sufficient to ground removal is the fact that the acts of petitioners were patently carried out under "color" of the First and Fourteenth Amendments whether the "substance" of these rights "existed or not."

Any other interpretation of Section 1443 (2) would render it a nullity. Congress has granted the federal courts jurisdiction in these situations precisely so that these issues, exclusively federal constitutional questions, may be litigated and decided if

desired in the most appropriate forum, a Federal District Court. Thus it is sufficient for purposes of removal to show that petitioners were claiming or acting under color of constitutional or federal statutory rights. The problems of balancing First Amendment rights against asserted interests of community peace and welfare are not before a District Court on a motion to remand. The problem of whether or not the exercise of constitutional rights will be protected, whether petitioners' exercise of First Amendment rights falls within the orbit of constitutional protection, cf. American Communications Association v. Douds, 339 U.S. 382, must be decided later. To sustain removal it needs merely to be shown that petitioners were in fact attempting to exercise constitutionally sanctioned rights.

d) Under the plain words of 1443 (2) petitioners have more than established jurisdiction. The Supreme Court has not limited in any way the clear and unequivocal words of this statute.

The older decisions of the Supreme Court construing Section 1443 relate solely to an interpretation of subsection (1). Thus such cases construing Section 1443 as Strauder v. W. Virginia, 100 U.S. 303 (1879); Virginia v. Rives, 100 U.S. 313 (1879); Bush v. Kentucky, 107 U.S. 110 (1882); Smith v. Mississippi, 162 U.S. 592 (1896); Murray v. Mississippi, 163 U.S. 101 (1896); Williams v. Mississippi, 170 U.S. 213 (1898); Neal v. Delaware, 103 U.S. 370 (1880); Kentucky v. Powers, 201 U.S. 1 (1906), all relate exclusively with subsection (1). They raise solely the problem of the inability to obtain a fair trial. None of these cases involved a petitioner claiming that the acts for which he is prosecuted were done under color of authority of a law providing for equal rights. The petitioners in these cases had allegedly committed criminal acts such as murder or rape and were raising

the issue of whether or not they could get a fair trial in the State court. The holdings in these cases in no way involved subsection (2). The issue of whether or not petitioners will be denied the right to a fair trial in the State court is solely a subsection (1) problem. It does not affect subsection (2) at all.

Similarly all recent District Court opinions deal only with the ability to obtain a fair trial question, exclusively a subsection (1) issue. Cf. Texas v. Dorris, 165 F. Supp. 738; Llano del Rio v. Schmidt, 84 F. Supp. 336; Hill v. Pa., 183 F. Supp. 126; Rand v. Arkansas, 191 F. Supp. 20. In the same way North Carolina v. Jackson, 135 F. Supp. 682, is relevant only to an interpretation of subsection (1). As the Court pointed out in the Jackson case, "the sole basis for the removal stated in defendant's petition" was the allegation that defendant was threatened with the deprival of a fair trial in the State court.

The Supreme Court and District Court cases thus relate solely to a consideration as to under what circumstances it can properly be asserted with any certainty that a defendant will be deprived of a fair trial in a State court. Cf. Virginia v. Rives and cases cited supra. These considerations are of course utterly irrelevant to any interpretation of subsection (2). This section does not involve any question of the availability of a fair trial but solely rests upon the character of the acts for which a defendant has been prosecuted. There can be no speculation about this question. Cf. Virginia v. Rives, supra. The jurisdiction of the Federal Court here does not rest, as in a subsection (1) case, upon an estimate of what may happen in the future in a State court, but upon what has already occurred. It is for this reason that the cases interpreting subsection (1) have no relevance to

an interpretation of subsection (2). The statute comes before this Court unrestricted by any case law gloss. The plain words govern. The District Court was required to deny the motion to remand.

e) In summary, the present petitions provide the Court with a classic subsection (2) situation. Congress clearly intended that where persons are being prosecuted for exercising their constitutional rights these persons should be granted the privilege of having their prosecutions litigated in a federal forum. Petitioners here are being prosecuted for constitutionally seeking their equal rights. The orders of remand disregard the statute and plain intent of Congress.

The serious impact of the questions here presented both upon the national and local situation is well stated in the memorandum setting forth the interest of the United States in the removal proceedings:

> "The importance of a considered decision as to the scope of section 1443 can hardly be overestimated. If the removal of these cases is sustained under that section, something of the original purpose of the earlier Congress -- to provide a federal forum in which Negroes may defend against state criminal charges in certain, carefully selected situations -- will have been vindicated.
>
> The need for an impartial federal forum in cases of this sort is self-evident. In Danville, Virginia, Negro citizens in great numbers seek to obtain true citizenship status -- one century after the Emancipation Proclamation and almost a hundred years after the judgment of the Congress and three-fourths of the states that freedmen were 'citizens of the United States and of the State in which they reside.' U.S. Const., Amend. XIV. The ensuing struggle, in Danville and elsewhere, has engendered great bitterness and ill feeling. The legal questions involved should be decided in an atmosphere free from rancor and free from the suspicion that those sitting in judgment do not truly stand apart from the struggle. Historically and traditionally, the federal courts have provided a forum adapted to this end. The removal statute is an appropriate means -- perhaps the only practical means -- by which federal jurisdiction can be exercised in such a situation."

CONCLUSION TO BRIEF

The cases here presented raise many issues of federal and Constitutional law. It would serve no purpose to restate these questions in conclusion. But out of the interrelationship of cases, proceedings, arrests, injunctions and trials in Danville since this last June certain unifying factors emerge which may be appropriate here to consider.

We have been recently reminded that "A Court, as Chief Justice Taft stated, would be blind not to see what 'all others can see and understand' Bailey v. Drexel Furniture Co. 1927, 259 U.S. 20, 37" State of Alabama v. United States, 304 F. 2d 583 (CA 5, 1962). Increasingly the Danville pattern has emerged clearer and clearer for all to "see and understand". On August 12th, the New York Times characterized the Danville situation as "an example of successful resistance to Negro demonstrations demanding equality,...among the most unyielding, ingenious, legalistic and effective of any city in the South" (Exhibit A to Brief). Only two days later a prominent Virginia newspaper, the Richmond News Leader, went further in characterizing this "ingenious" resistance (cf. Exhibit A), as a "legal situation rapidly threatening to disgrace Virginia", and as a "spectacle of trumped-up ordinances, unwarranted arrests, drumhead trials, and autocratic decrees" (Exhibit B to Brief). The Richmond News Leader concluded that if the police and courts of Danville "would confine themselves to enforcing well-established law, instead of to suppressing men's liberties, Virginia might yet emerge with some shreds remaining of a reputation for judicial greatness" (Exhibit B to Brief).

These are sharp words from Virginia. But they reflect the

realities of the situation. Only this term the Supreme Court found it necessary to state, "We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community of Virginia." NAACP v. Button, supra, at p. 339. Here it is clear for all to "see and understand" that the purpose of the "politically dominant white community" of Danville has been to utilize the machinery of the law to suppress the exercise of First Amendment liberties by the Negro citizens of their city rather than to engage in peaceful discussions seeking an elimination of practices violative of the freedom and equality guaranteed by the Fourteenth Amendment.

Of course the City officials have on many occasions since June stubbornly maintained that their sole concern has been the vindication of the civil peace. Judge Wisdon in the Court of Appeals for the Fifth Circuit had the occasion recently to respond to a similar assertion by the officials of the City of Jackson, Mississippi:

> "This disingenuous quibble must rest on the assumption that federal judges are more naive than ordinary men. Perhaps they are. Holmes thought so. But in the sector of the law encompassed in the subject 'Civil Rights' case by case federal courts have acquired a thorough education in 'Sophisticated Circumvention'".

United States v. City of Jackson, 318 Fed 1 (CAS, May 13, 1963).

Appellants have now turned to the only judicial arena open to them for redress. The Federal Constitution alone stands as a barrier to the wholesale disregard for the fundamental liberties of a free people which has characterized this summer in Danville, Virginia. And this Court sits as the guardian of that Constitution. If the deep felt hope of this Court is to be realized that "the basic problems themselves can be resolved

only by the people concerned" then this Court must guarantee that this democratic objective can only "be preserved and extended by the observance and protection, not the denial of the basic constitutional rights here asserted" Watson v. City of Memphis, supra.

Appellants respectfully submit that all orders appealed from must be reversed and the relief prayed for granted.

Respectfully submitted

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EXHIBIT A

[Article appearing in The New York Times
August 11, 1963]

DANVILLE METHOD STUDIED IN SOUTH

Other Cities Observe Ways to Resist Negro Protests

By BEN A. FRANKLIN

Special to The New York Times

WASHINGTON, Aug. 10 -- Danville, Va., the last capital of the Confederacy, now a drab textile and tobacco town of 50,000, is widely regarded as an example of successful resistance to Negro demonstrations demanding equality.

Officials of other Virginia cities have traveled here to observe and learn in an unspoken compliment to a defense strategy that is among the most unyielding, ingenious, legalistic and effective of any city in the South.

Danville's demonstration leader today conceded the mettle of his adversaries. In a telephone interview, the Rev. Lendell W. Chase, head of the Danville Christian Progressive Association, said the city had discouraged the Negro community with "a display of psychological warfare."

A Justice Department official who has studied developments in a number of southern cities said that even in Birmingham, Ala., "where fire hoses first became popular," the city "finally reached an agreement that brought some desegregation."

"This sort of thing is not in sight in Danville," the official said.

He also pointed out that Danville had been among the first to make official use of "the Communist issue". City attorneys have tried repeatedly to show in court that at least some demonstration leaders are members of groups cited by the House Committee on Un-American Activities.

The Rev. Dr. Martin Luther King Jr., the Negro leader of the Birmingham movement, made a similar judgment in harsher terms last month.

In Danville for a rally, Dr. King called the city's resistance to Negro demands "the worst in the United States, followed closely by Gadsden, Ala., and Savannah, Ga."

At first, Danville ignored the demonstrators. Picketing

began May 31, but for five days neither the two daily newspapers nor the local radio station reported the presence of Negroes in the streets.

On June 5 and 6, Negroes invaded the Danville Municipal building for a sit-in in the office of Mayor Julian C. Stinson and marched eight abreast down Main Street. Ordered to disperse, they staged a "sit-in" on the pavement. The city reacted with fear.

Entrances to the Municipal Building were closed and placed under armed guard by deputized civilian employes, including water meter readers and garbage men. The building is still, two months later, closely guarded, sand bagged and barricaded.

Virtually every city official -- including Corporation Court Judge Archibald M. Aiken -- began wearing conspicuous side arms.

Pistols of various lengths became a customary part of civilian dress. City Councilman John W. Carter, a segregationist leader, joined helmeted police on the streets at night. He carried a large black nightstick. Everything that moved -- including newsmen -- was photographed.

On the night of June 10, firemen, on Mayor Stinson's order, turned high pressure fire hoses on demonstrators gathered outside the jail. Then the police moved in with nightsticks. Forty-seven Negroes were injured.

This incident, precipitated by what the police said were assaults upon them by the demonstrators, has had a lasting effect. "It put the fear of God in them," one city official said today.

On June 22, policemen broke down a door in the High Street Baptist Church to arrest a group of demonstrators. Last week, they arrested the Rev. Lendell W. Chase, head of the Danville Christian Progressive Association at his home at 4 A.M.

The charge was contributing to the delinquency of minors -- his children, who had participated in a demonstration. He was jailed for 11 hours.

The police policy has continued to be aggressive, and demonstrations have flagged.

Leaders Are Indicted

In addition, the city early in the struggle indicted a dozen desegregation leaders under an old Virginia statute that makes it a felony to "incite the colored population to acts of war and violence." The statute carries a minimum prison sentence, on conviction, of five years.

The effect of these tactics on Negroes has been noticeable and has encouraged the police to continue them. The mere presence of fire engines in front of the municipal building, with their hoses connected and engines idling, has routed at least two demonstrations.

When Dr. King, head of the Southern Christian Leadership Conference, spoke in Danville a month ago, he appealed to 2,000 Negroes at a mass rally to "go out and fill the jails for freedom."

Only 82 volunteered to march, and all but 14 were routed by the commands of Chief McCain, backed by fire engines and tear gas guns.

Early in June, Judge Aiken granted the city a sweeping anti-demonstration injunction. It has provided the chief ground for arrest. Last week Judge Aiken made the injunction permanent and broadened it further.

A new section enjoins demonstration leaders from "participating in, financing, sponsoring, encouraging or engaging in meetings or other activities whereby the violation of the laws of the Commonwealth of Virginia or the city of Danville or the terms of this injunction are suggested, advocated or encouraged."

This appeared to cover all activities usually engaged in at mass meetings in the High Street Baptist Church, starting point of the demonstrations.

In addition, Judge Aiken ordered that 124 of the 328 demonstrator-defendants awaiting trial in his court for violating the injunction be tried in other Virginia courts up to 250 miles away. The prompt administration of justice, the judge ruled, required this unusual dispersion of trials.

Last Thursday the United States Court of Appeals for the Fourth Circuit in Baltimore ordered a temporary halt to the "burdensome" tactic of farflung trials.

EXHIBIT B

[Editorial appearing in The Richmond
News Leader, August 12, 1963]

THANK YOU, MR. SOBELOFF

We never on earth dreamed that the day would come when these columns would carry a complimentary word for Judge Simon Sobeloff and his Fourth U. S. Circuit Court of Appeals, but the day has now arrived.

Thank you, sir, for suspending the gold-plated, triple-bottomed, hand-tooled stupidity of these so-called Danville trials. By prohibiting further prosecutions under a high-flying injunction of the Danville Corporation Court, Judge Sobeloff and his colleagues have restored some semblance of judicial propriety to a legal situation rapidly threatening to disgrace Virginia.

This beloved Commonwealth, God save the mark, ought to be setting an example to the whole country in the handling of these racial demonstrations. The Old Dominion, above all States in the Union, should be instructing the public in what constitutional government is all about. This is where the doctrine of free speech was born. This is where the principle first was laid down that in criminal prosecutions "a man hath a right to a speedy trial by an impartial jury of his vicinage."

But what a travesty on Virginia's heritage have we witnessed in Danville! What a spectacle of trumped-up ordinances, unwarranted arrests, drum-head trials, and autocratic decrees! Toward the end of last week, it was solemnly proposed, dead-pan, to compel defendants in these Danville absurdities to travel to Bristol, Buchanan, Lee, Russell, and Fairfax Counties to be tried, in flagrant violation of rights guaranteed to citizens of Virginia since 1776.

Admittedly, it never is easy to draw a line between the rights of the individual and the powers of the state. But the task is not as difficult as Danville's wretched example would have us believe. Virginia's Constitution lays down a sensible guide: "Any citizen may freely speak, write and publish his sentiments on all subjects, <u>being responsible for the abuse of that right</u>."

Where it can be shown that these demonstrators clearly have abused their rights, they surely may be held responsible for the abuse. But orderly picketing is not an abuse. Preaching sermons is not an abuse. Distributing handbills is not an abuse. And when Danville undertakes to abridge the demonstrators' rights of free speech, all Virginia winces in shame.

Nothing the Supreme Court has done or said in these "sit-in"

cases suggests for one instant that the Court will reverse honest convictions, honestly obtained. Where demonstrators are caught hurling bricks, slashing tires, blocking streets, or screaming obscenities, let them be arrested on specific criminal charges. Such convictions surely will be sustained. But convictions for picketing closer than six feet apart, or parading without a permit, or for violating some thunderous injunction addressed to the whole human race, will be knocked down at the first moment an appellate judge who has read the Constitution manages to get his hands on them.

A sound administration of justice would promptly dismiss all these arrests, except for those in clear cases of disorderly conduct or more serious criminal offenses. And if the cops and courts thereafter would confine themselves to enforcing well-established law, instead of to suppressing men's liberties, Virginia might yet emerge with some shreds remaining of a reputation for judicial greatness.

Certificate

The undersigned certifies that on the 30th day of August, 1963, he forwarded one copy each of the attached Brief and Appendix to all counsel of record for respondents by prepaid United States Mail.

William M. Kunstler

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 9080		
BAINES, et al.,	Appellants	
v.		
CITY OF DANVILLE, VIRGINIA,	Appellee	
No. 9081		
CHASE, et al.,	Appellants	
v.		
MC CAIN, et al.,	Appellees	
No. 9082		
MC GHEE, et al.,	Appellants	
v.		
CITY OF DANVILLE, VIRGINIA,	Appellee	
No. 9083		
LEWIS, et al.,	Appellants	
v.		
BENNETT, et al.,	Appellees	
No. 9084		
CHASE, et al.,	Appellants	
v.		
AIKEN, et al.,	Appellees	

APPENDIX TO BRIEF FOR
APPELLANTS

I N D E X

page

I. PAPERS IN BAINES, ET AL. V. CITY OF DANVILLE, VIRGINIA, NO. 9080, and MC GHEE, ET AL. V. CITY OF DANVILLE, VIRGINIA, NO. 9082

1. Petition for Removal in McGhee . . . . . App. 1
2. Petition for Removal in Baines . . . . . App. 5
3. Order Granting Leave to United States to Intervene Amicus Curiae . . . . . App. 7
4. Order in Baines. . . . . App. 7
5. Order in McGhee. . . . . App. 7
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I

PAPERS IN BAINES, ET AL. V. CITY OF DANVILLE, VIRGINIA, NO. 9080, and MC GHEE, ET AL. V. CITY OF DANVILLE, VIRGINIA, NO. 9082

1. Petition for Removal in McGhee

TO THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA:

Your petitioners, respectfully show:

1. That the above entitled proceeding was brought in the Corporation Court of the City of Danville, Virginia, and is now pending therein.

2. That the said proceeding is brought to punish the aforementioned plaintiffs for the violation of a certain temporary injunction and restraining order issued by the Honorable A. M. Aiken, the Judge of the said Corporation Court of the City of Danville, Virginia.

3. That petitioner is one of the Attorneys for the above named plaintiffs.

4. That said plaintiffs, all of whom are members of the Negro Race, are charged with violation of the aforesaid temporary injunction and restraining order.

5. That said temporary injunction and restraining order are in violation of the Civil Rights of said plaintiffs hereto as prohibited by subsections 1 and 2 of Section 1443, Title 28, United States Code, and are therefore subject to removal to this Court pursuant to the provisions of said statute.

6. That the aforesaid temporary injunction and restraining order violate the Constitution of the United States and the Amendments thereto by making criminal, conduct which is pro-

tected by the First, Fifth and Fourteenth Amendments to the Constitution of the United States and other Amendments thereto.

7. That plaintiffs are denied and/or cannot enforce in the Courts of the State of Virginia rights under the Constitution and laws of the United States providing for the equal rights of citizens of the United States and all persons within the jurisdiction thereof, and/or are being prosecuted for acts under color of authority derived from the Constitution and laws of the United States.

That the plaintiffs herein are denied all rights and cannot secure a fair trial and have no right under the Constitution of the United States in the local courts is illustrated by the following:

a. The Court refused and refuses to allow the petitioners to challenge the validity of the subject injunction under which the petitioners are being tried, hence the petitioners may be convicted under an invalid injunction.

b. That the subject injunction under which the petitioners are being tried and prosecuted is one that is personally directed to persons other than the petitioners (Dunlap, Campbell, Adams, et als) who sued the City of Danville and the Court with regard to the racial signs and racial segregation practiced in the Courtroom.

c. Judge Aiken, the presiding Judge, is the only person in Danville with jurisdiction to preside over the trials of these petitioners.

d. Judge Aiken, has personally intervened and sought to cause the protest over racial segregation to end by going before the named persons in the injunction and ordering peaceful protest to disburse.

e. That the Court held most of the above named petitioners for three days without any bail in denial of all rights regarding bail as provided under the United States Constitution.

f. That the Court has already sentenced one 17 year old youth to jail for 45 days and denied bail pending appeal, which is tantamount to denying appeal even though no evidence of the proclivities or character of the convicted person was shown. The court has indicated that all 105 of the persons accused of violating the injunction will be treated likewise.

g. That the juvenile petitioners are being denied the right to probationary reports and treatment as juvenile as provided by state law; the one juvenile sentenced on 17 June was sent to the City Farm with hardened and adult prisoners.

h. The Court has flatly refused to inform the petitioners of the specific charges or acts that they have supposed to have committed under the terms of the injunction, even though the said injunction has eight (8) compound, complex provisions therein.

i. That the conviction has taken place and other convictions will take place although there is no showing that the petitioners herein were with notice of the provisions.

j. That if there be any violations of the injunctions the elected officials of the City have caused the petitioners to commit those violations by failing to give notice to those engaged in the peaceful protest.

k. That your petitioners are poor Negroes without funds with which to conduct a defense in the State Court. That there is needed both court reporters, and transcripts and that under the prevailing state law these petitioners, even though paupers, cannot have the assistance of the State in securing these neces-

sities to the protection of their rights because paupers in misdemeanors are not entitled to pauper appeal.

1. That the petitioners range in ages from 15 years of age to 55 years of age.

m. Counsel for the petitioners are being intimidated by the Commonwealth in open court who admits he is trying to bring charges of unethical conduct charges against the petitioners counsel and the Court does nothing to prevent the action in open court by the said Commonwealth Attorney.

n. That the Courtroom is dominated by scores of armed Officers who searched all Negro Attorneys, witnesses, or court reporters while ignoring white persons who enter. That this is humiliating to the Negro women.

o. That the court has refused to grant to the petitioners their right to a trial by a jury of their peers, while at the same time denying the right to a public trial.

p. That the court has indicated that the ordinary rules of evidence are inapplicable in these contempt proceedings.

q. That the court read a printed summation of the denial of all bail pending appeal which had been prepared before the presentation of all the evidence.

r. That although racial protest against segregation is involved the Court has denied and intends to deny defense counsel the right to present evidence of the subject matter of the protest.

s. That the Court is putting the petitioners on trial on the unsworn representations of diverse persons unknown to the petitioners.

t. That the court is forcing the 105 persons charged under these proceedings to appear daily with their Attorney without

any notice of who is being tried next. This procedure tends to deny the right to counsel and forces further poverty on those persons with jobs.

8. That, in particular, defendants are being prosecuted for demonstrating upon the streets of Danville, Virginia, in protest against certain laws, practices and customs seeking to perpetuate the practice of segregation of the races, and for engaging in other lawful forms of peaceful protests against such laws, practices and customs.

9. That no bond with good and sufficient surety is required to be filed herewith since this proceeding to punish for contempt is criminal in nature.

WHEREFORE, petitioners file this petition for the removal of said proceedings from the Corporation Court of the City of Danville, Virginia, to the United States District Court for the Western District of Virginia and pray that said proceeding stand so removed.

* * * * * * *

2. Petition for Removal in Baines

TO THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF VIRGINIA:

Your petitioner, WILLIAM M. KUNSTLER, respectfully shows:

1. That the above entitled proceeding was brought in the Corporation Court of the City of Danville, Virginia, and is now pending therein.

2. That the said proceeding is brought to punish the aforementioned defendants for the violation of a certain temporary injunction and restraining order issued by the Honorable A. M.

the Judge of the said Corporation Court of the City of Danville, Virginia.

3. That petitioner is one of the Attorneys for the above named defendants.

4. That said defendants, all but one of whom are members of the Negro Race, are charged with violation of the aforesaid temporary injunction and restraining order.

5. That said temporary injunction and restraining order are in violation of the Civil Rights of said defendants hereto as prohibited by subsections 1 and 2 of Section 1443, Title 28, United States Code, and are therefore subject to removal to this court pursuant to the provisions of said statute.

6. That the aforesaid temporary injunction and restraining order violate the Constitution of the United States and the Amendments thereto by making criminal conduct which is protected by the First, Fifth and Fourteenth Amendments to the Constitution of the United States and other Amendments thereto.

7. That defendants are denied and/or cannot enforce in the courts of the State of Virginia rights under the Constitution and laws of the United States providing for the equal rights of citizens of the United States and all persons within the jurisdiction thereof, and/or are being prosecuted for acts under color of authority derived from the Constitution and laws of the United States.

8. That, in particular, defendants are being prosecuted for demonstrating upon the streets of Danville, Virginia, in protest against certain laws, practices and customs seeking to perpetuate the practice of segregation of the races, and for engaging in other lawful forms of peaceful protests against such laws, practices and customs.

9. That no bond with good and sufficient surety is required to be filed herewith since this proceeding to punish for contempt is criminal in nature.

WHEREFORE, petitioner files this Petition for the removal of said proceeding from the Corporation Court of the City of Danville, Virginia, to the United States District Court for the Western District of Virginia and prays that said proceeding stand so removed.

WILLIAM M. KUNSTLER

* * * * * * *

3. Order Granting Leave to United States to Intervene Amicus Curiae

Upon motion of the United States of America by its attorneys, leave is given it to file a Memorandum as amicus curiae in the above entitled case.

ENTER:

/s/ Thomas J. Michie
United States District Judge

* * * * * * *

4. Order in Baines

The petitioners in the above styled case having removed the criminal contempt prosecutions against them from the Corporation Court of Danville, Virginia to this Court pursuant to the provisions of 28 USCA §§ 1443 and 1446, it is the opinion of this Court in considering a motion to remand by the City of Danville that this case was improperly removed, no authority for such removal being present in 28 USCA § 1443. Therefore it is

O R D E R E D

that said prosecutions be and they are hereby remanded to the Corporation Court of the City of Danville.

ENTER July 11, 1963
at 10:45 a.m.

/s/ Thomas J. Michie
U. S. District Judge

* * * * * * *

5. Order in McGhee

The petitioners in the above styled case having removed the criminal contempt prosecutions against them from the Corpo-

ration Court of Danville, Virginia to this Court pursuant to the provisions of 28 USCA §§ 1443 and 1446, it is the opinion of this Court in considering a motion to remand by the City of Danville that this case was improperly removed, no authority for such removal being present in 28 USCA § 1443. Therefore it is

O R D E R E D

that said prosecutions be and they are hereby remanded to the Corporation Court of the City of Danville.

ENTER July 11, 1963
at 10:45 a.m.

/s/Thomas J. Michie
U. S. District Judge

* * * * * * *

6. Notice of Appeal in Baines

Petitioners hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order entered herein on July 11, 1963, granting respondents' motion to remand the cases herein and from each and every part of said Order.

/s/ Arthur Kinoy
PETITIONERS BY THEIR ATTORNEYS

* * * * * * *

7. Notice of Appeal in McGhee

Petitioners hereby appeal to the United States Court of Appeals for the Fourth Circuit Court from the Order entered herein on July 11, 1963, granting respondents' motion to remand the cases herein and from each and every part of said Order.

/s/ William M. Kunstler
PETITIONERS BY THEIR ATTORNEYS

* * * * * * *

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
- - - - - - - - - - - - - - - - - X

BAINES et al.

v.

CITY OF DANVILLE

———

MCGHEE et al.

v.

CITY OF DANVILLE
- - - - - - - - - - - - - - - - - X

8. PETITION AND MOTION

Now come the petitioners by their attorneys and petition this Honorable Court that on the verified petitions for removal of the above entitled cases to the United States District Court for the Western District of Virginia and attached exhibits duly filed with the Clerk of said Court, and on the transcript of the hearings on respondents' motion to remand said cases to the Corporation Court of the City of Danville, Virginia at which oral evidence was adduced, and on the order of the District Court entered on July 11, 1963 granting said motion to remand, and on all the papers and proceedings herein, that pursuant to Title 28 U.S.C. Section 1651 this Court issue a writ and order in the nature of a Writ of Mandamus to the United States District Court for the Western District of Virginia and/or to the Honorable Thomas J. Michie, United States District Judge directing said Court and/or said Judge to hear and decide the aforesaid cases removed to the United States District Court for the Western District of Virginia pursuant to Title 28 U.S.C. Section 1443 according to law and to withdraw as null and void and without any effect the order of July

11, 1963 purporting to remand said cases to the Corporation Court of the City of Danville, Virginia;

And in the alternative petitioners respectfully move this Court for leave to file with this Court a petition that the above described writ and order in the nature of a Writ of Mandamus issue as prayed for above;

And petitioners further move this Court that pending the hearing and determination of this petition and/or motion for leave to petition, this Court stay the effect and operation of the order of July 11, 1963 of the District Court remanding the cases herein to the Corporation Court of the City of Danville.

* * * * *

* * * * *

II

PAPERS IN CHASE V. MC CAIN, NO. 9081

1. Complaint

The Rev. L. W. Chase and the other named plaintiffs file this complaint under the Federal Declaratory Judgment Act, 28 USC § 2201 against the named defendants and avers:

Jurisdiction

1. Jurisdiction of this Court is invoked under the First, Fourth, Fifth, Fourteenth Amendments to the United States Constitution Title 28, U. S. Code, Section 2201, and Section 2202 Title 42 U. S. Code, Section 1981, 1982, 1983, 1984, 1985, as amended.

2. The matter in controversy exceeds the sum or value of Ten Thousand Dollars ($10,000.00) exclusive of interest and costs.

Parties

3. The plaintiffs are Negro citizens of the City of Danville,

Virginia, and bring this action for themselves and for all other similarly situated, pursuant to Rule 23, (a) (3) of the Federal Rules and Civil Procedure.

4. The named defendants are officials of the City of Danville, Virginia, a Municipal Corporation located in this Federal District.

5. The following defendants are members of the City Council: Julian R. Stinson, Charles Womack, Willie McCubbins, D. Luther Arey, John Carter, George B. Anderson, George R. Daniels, Cassell Jones, and Fletcher Harris.

6. Defendant, Julian R. Stinson is Mayor of the City of Danville, Virginia.

7. Defendant, T. Edward Temple is City Manager of the City of Danville, Virginia.

8. Defendant, Eugene G. McCain is Chief of Police of the City of Danville, Virginia.

9. Defendant, Calvin W. Berry is Municipal Judge for the City of Danville, Virginia.

Actual and Substantial Controversy

10. On June 13, 1963, the City Council of the City of Danville passed Ordinance Number 63-6.2, entitled AN ORDINANCE LIMITING PICKETING AND DEMONSTRATIONS: PROVIDING PUNISHMENT FOR VIOLATIONS THEREOF, a copy of which is attached hereto and made a part hereof.

11. Plaintiff, L. W. Chase and over thirty seven (37) others similarly situated are presently awaiting trial for alleged violation of the above-stated ordinance.

12. Plaintiff Patricia Chase is 16 years old and is denied Federally guaranteed rights under the provisions of this Ordinance.

13. Plaintiff Lawrence G. Campbell is denied his rights under the Federal Constitution to effectively protest his status and the status of other Negro citizens of Danville, Virginia, and he has been and is threatened with arrest under this Ordinance.

14. There exists presently in the City of Danville a near state of siege, and wholesale violations of Federal constitutional protected rights of Negro citizens are being denied by the police under the pretext of enforcing the said ordinance.

15. The Ordinance was passed to prevent the just grievances of the Negro community from being stated to their elected officials.

16. The City of Danville maintains under the color of State law a segregated city. Examples follow:

a. No Negroes are employed on the police force

b. No Negroes are employed on the fire department

c. The School System is segregated

d. The city officials use the influence of City government to maintain segregated patterns of housing, of private employment, and segregation in most areas of public facilities.

17. The plaintiffs and other Negro citizens in the City of Danville constitute approximately one-fourth of the city's population and yet with few exceptions are relegated to menial labor tasks and are denied equal opportunity in all phases of the community's life.

18. Plaintiffs and others similarly situated have peacefully appeared at City Council meetings asking for a redress of their grievances but to no avail.

19. The defendant's city councilmen even restricted their right to appear in person before the council to present their

grievances for an end to their segregated status.

20. The only lawful method left to the plaintiffs and other Negro citizens was public, peaceful, nonviolent demonstrations on the streets of Danville, in order to call attention to the continued denial of their most elementary rights to life a life with the same guarantees of American citizenship guaranteed to the members of the white race.

21. These plaintiffs and others have engaged in peaceful nonviolent demonstrations thereby exercising their Federally protected rights of free speech, assembly and right to petition their government for a redress of their grievances.

22. These plaintiffs and their ancestors have since the Civil War waited patiently for full American citizenship rights.

23. Plaintiffs have and presently seek full American citizenship rights in a lawful constitutional manner.

24. Defendants have met plaintiffs' lawful attempts to secure freedom with a gigantic show of force and violence.

25. Defendants in enforcing this ordinance have caused fire hoses and clubs to be used on Negro demonstrations.

26. Defendants have caused the streets of Danville to appear as an armed camp with not only city police but with Virginia State Troopers patrolling the city.

27. This ordinance was passed solely for the purposes of denying meaningful protest to the city government and is on its face unconstitutionally aimed at the members of the Negro race.

28. Contrary to the allegations contained in the ordinance and the so-called findings or statements of fact, the violence alleged was entirely caused by the unlawful acts of the defendants, first in maintaining a segregated city in open violation of the Federal Constitution and secondly, denying plaintiffs their rights under Federal and State law.

29. Any alleged violence therefore was not caused by the plaintiffs and others named herein, but by the defendants.

30. The Ordinance is unconstitutional on its face, or in the alternative, is unconstitutional as applied to these plaintiffs and others similarly situated.

31. The Ordinance violates Federal and State constitutionally protected rights in the following areas:

a. Freedom of Speech

b. Freedom of Assembly

c. Freedom to petition for a redress of grievances

d. Violates due process in that it is vague and uncertain and fails to set legal standards of conduct

e. Acts as a restraint on Interstate Commerce in its restraint on picketing

Immediate and Irreparable Injury

32. Unless this Court acts, further denial of these plaintiffs' rights will occur.

33. The trial of plaintiff L. W. Chase and numerous others is set for trial on June 24th and June 27th in the Municipal Court before Defendant Municipal Judge Calvin W. Berry.

34. The City officials named in this suit have been and threatening to jail, beat and otherwise injure those persons seen on city streets who are Negroes and who may appear to be in anyway protesting segregation or who may be known to approve of efforts to eradicate racial segregation.

35. Diverse and unknown Negroes are unable to walk the streets of Danville because of fear that policemen will unjustly arrest them under this ordinance.

36. City officials have announced through news media that they are following a "hard" or "get tough" policy with regard

to all Negroes who appear to be opposed to segregation.

37. In furtherance of such policies Negroes are being arrested, held without bail, have been beaten, denied counsel, jury trials and have acted in such a manner as to necessitate the Justice Department sending in twenty (20) F. B. I. Agents to investigate brutality and other denials of civil liberties and civil rights.

38. Denial of peaceful protest threatens to evoke violence--because injustice demands protest and this subject ordinance denies peaceful protest.

Relief Prayed

1. The Court immediately issue a temporary restraining order to halt further arrests and prosecutions under this ordinance.

2. The Court after preliminary hearing issue a temporary injunction halting further arrests and prosecution under the ordinance pending final hearing.

3. The Court declare the ordinance unconstitutional and discharge all persons arrested thereunder.

4. The Court grant such further relief as justice requires.

APPENDIX A TO COMPLAINT

PRESENTED: June 14, 1963

ADOPTED: June 14, 1963

ORDINANCE NO. 63-6.2

AN ORDINANCE LIMITING PICKETING AND DEMONSTRATIONS; PROVIDING PUNISHMENT FOR VIOLATIONS THEREOF.

WHEREAS, large, noisy, lawless and rioting groups of people, there being among these armed persons with records as habitual

criminals, under the pretext of picketing, have incited racial strife, caused personal injuries and desctuction of property; and,

WHEREAS, such groups have further disrupted the peace and convenience of this community, have placed the citizenry in fear of its safety and have disrupted the orderly flow of both vehicular and pedestrian traffic; and,

WHEREAS, there are reasonable restraints which must be imposed upon freedom of speech and assembly when such freedoms are exercised in such a manner as to endanger the personal safety and property of the citizenry; and,

WHEREAS, it is necessary to impose reasonable regulations upon assemblies and picketing,

NOW, THEREFORE, BE IT ORDAINED, as follows:

(1) All assemblies and picketing shall be peaceful and unattended by noise and boisterousness, and there shall be no shouting, clapping or singing of such a nature as to disturb the peace and tranquility of the community; and,

(2) That marching shall be in single file and pickets or demonstrators shall be spaced a distance of not less than ten feet apart, and not more than six pickets shall picket or demonstrate before any given place of business or public facility; and,

(3) That all picketing or demonstrating shall be during the business or work hours of the place of business or public facility being picketed, and upon such days as such facility may be open for the transaction of business; and,

(4) That no picketing or demonstrating shall be performed within any public building; and,

(5) That no person under the age of eighteen years shall be permitted to march, picket or demonstrate in the city; and,

(6) That no vehicles shall be used in any picket or demonstrating line, and that all picketers or demonstrators shall be afoot; and,

(7) That violation of the foregoing regulations shall constitute a misdemeanor, and be punished as provided in Section 1-6 of the Code of the City of Danville, 1962.

APPROVED:

ATTEST:

_____
Mayor

_____
Clerk

* * * * * * *

2. Amended Complaint

LENDELL W. CHASE, ET ALS
V.
CHIEF EUGENE MC CAIN, ET ALS

Plaintiffs amend the Complaint previously filed as follows:

1. In addition to the other jurisdictional allegations plaintiffs amend to include Section 1343 of Title 28.

/s/ J. L. Williams
J. L. WILLIAMS, ATTORNEY FOR PLAINTIFFS

* * * * * * *

3. Opinion in Chase v. McCain

This suit is one of the numerous suits growing out of the recent "demonstrations" in Danville by colored citizens seeking what they doubtless honestly believe to be their rights under the law. Fortunately, I do not have to decide in this case whether their beliefs are justified. The demonstrations led to actual violence which the colored citizens blame wholly upon the police and the police blame wholly upon the demonstrators.

Again, I am happy to say that I do not have to decide that issue in this case.

As a result of the demonstrations and the violence attending them, the City Council of the City of Danville adopted Ordinance No. 63-6.2 entitled "An Ordinance Limiting Picketing and Demonstrations; Providing Punishment for Violations Thereof."

The Bill of Complaint alleges that the ordinance infringes on the Constitutional rights of the plaintiffs and asks that this Court issue a temporary restraining order against further arrests and prosecutions under the ordinance and later a temporary injunction to the same effect and finally that the Court declare the ordinance unconstitutional.

In the view that I take of the case it is unnecessary to go into the substance of the ordinance in any detail. It regulates noise at meetings, the manner in which demonstrators may march, the number of pickets that may demonstrate in front of a building, the hours during which demonstrations are permitted and other similar matters.

Before I get to the question of the reasonableness and therefore the constitutionality of the provisions of the ordinance, I am met by the City's contention that a federal court, even if it has jurisdiction, should refrain from exercising it until the plaintiffs have exhausted their remedies in the state courts. As I believe this contention of the City to be sound, I do not reach the question of the constitutionality of the ordinance.

The cases of Henderson, et al. v. Trailway Bus Company, et al and Robinson, et al v. Hunter, et al, 194 F. Supp. 423 (1961), affirmed by the United States Supreme Court on June 17, 1963 in a per curiam opinion (31 Law Week 3415, sub. nom.

Robinson v. Hunter) are determinative of this case. These cases, heard by Circuit Judge Boreman and District Judges Lewis and Bryan, with opinion by Judge Bryan, arose out of the so-called "sit-ins," defined by Judge Bryan as "the passive and peaceable refusal of a Negro, or a white person acting in sympathy with him, to leave a restaurant, where on account of his race or color, the Negro has been denied service of food or beverages at the same counter or other space at which white persons are served." As in the case at bar, it was argued that the Virginia statutes requiring such segregation deprive the colored people of privileges and immunities secured to them by the equal protection clause of the Federal Constitution's Fourteenth Amendment and by the Civil Rights Acts. 42 U.S.C.A. §§ 1981-1983.

The court held that the Virginia statutes requiring such segregation, as applied in that case, were not unconstitutional, but went on to hold that, even if they were, persons charged with crime under them had no right to bring a suit for an injunction against their enforcement in a Federal court, saying:

> "But if we have erred in not finding infirmity in these statutes or inequality in their enforcement, nevertheless the plaintiffs have not shown an entitlement to an injunction. In the first place, a plain and adequate remedy at law is available to them, and this readiness, of course, completely refutes their appeal to equity jurisdiction. Redress at law is provided in their opportunity to defend the criminal prosecutions, indeed to stand mute until a case is made against them beyond a reasonable doubt under these very statutes, with no burden whatsoever upon them as defendants there. Nothing here indicates that a full and fair presentation, hearing and consideration of their views upon the validity of the two statutes cannot be had before the State courts in these prosecutions. Spence v. Cole, 4 Cir., 1943, 137 F.2d 71, 72. There is also the ultimate right of review in the Federal Supreme Court, as illustrated by Murdock v. Commonwealth of Pennsylvania, 1943, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292. Irreparable injury to the plaintiffs through submission of their contentions in this manner to the State tribunals is not demonstrated. This circumstance obviously undermines all foundation for the injunction claimed.

Strengthening this conclusion is the time-honored, judicious precept that a Federal court should never interpose its decree between a State and a criminally accused save in unusual circumstances--and none is here. Spence v. Cole, 4 Cir., 137 F.2d 71, 73, supra. So recently as February 27, 1961 the Supreme Court reaffirmed this rule. Aptly speaking to this point for the Court, in Wilson v. Schnettler, 365 U.S. 381, 81 S.Ct. 632, 635, 5 L.Ed.2d 620, Justice Whittaker summarized the doctrine in this language:

'* * * If, at the criminal trial, the Illinois court adheres to its interlocutory order on the suppression issue to petitioner's prejudice, he has an appeal to the Supreme Court of that State, and a right if need be to petition for 'review by this Court of any federal questions involved.' Douglas v. City of Jeannette, 319 U.S. 157, 163 [63 S.Ct. 877, 881, 87 L.Ed. 1324]. It is therefore clear that petitioner has a plain and adequate remedy at law in the criminal case pending against him in the Illinois court.

'There is still another cardinal reason why it was proper for the District Court to dismiss the complaint. We live in the jurisdiction of two sovereignties. Each has its own system of courts to interpret and enforce its laws, although in common territory. These courts could not perform their respective functions without embarrassing conflicts unless rules were adopted to avoid them. Such rules have been adopted. One of them is that an accused 'should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial.' Ponzi v. Fessenden, 258 U.S. 254, 259 [42 S.Ct. 309, 310, 66 L.Ed. 607]. Another is that federal courts should not exercise their discretionary power 'to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is both clear and imminent; * * *' Douglas v. City of Jeannette, supra, [319 U.S.] at 163 [63 S.Ct. at page 881].'

"The declaratory judgment prayed by the plaintiffs must also be denied. That procedure we deem inappropriate in the circumstances because the issue of criminal responsibility should be left to the State court. Spence v. Cole, 4 Cir., 137 F.2d 71, 73, supra."

Wilson v. Schnettler, referred to in the above quotation, involved an effort by a prisoner, held in a state jail for trial, to have a federal court suppress certain evidence that was to be used against him. The state court had declined to suppress the evidence. The disposition of the matter by the Supreme Court is suf-

Strengthening this conclusion is the time-honored, judicious precept that a Federal court should never interpose its decree between a State and a criminally accused save in unusual circumstances--and none is here. Spence v. Cole, 4 Cir., 137 F.2d 71, 73, supra. So recently as February 27, 1961 the Supreme Court reaffirmed this rule. Aptly speaking to this point for the Court, in Wilson v. Schnettler, 365 U.S. 381, 81 S.Ct. 632, 635, 5 L.Ed.2d 620, Justice Whittaker summarized the doctrine in this language:

'* * * If, at the criminal trial, the Illinois court adheres to its interlocutory order on the suppression issue to petitioner's prejudice, he has an appeal to the Supreme Court of that State, and a right if need be to petition for 'review by this Court of any federal questions involved.' Douglas v. City of Jeannette, 319 U.S. 157, 163 [63 S.Ct. 877, 881, 87 L.Ed. 1324]. It is therefore clear that petitioner has a plain and adequate remedy at law in the criminal case pending against him in the Illinois court.

'There is still another cardinal reason why it was proper for the District Court to dismiss the complaint. We live in the jurisdiction of two sovereignties. Each has its own system of courts to interpret and enforce its laws, although in common territory. These courts could not perform their respective functions without embarrassing conflicts unless rules were adopted to avoid them. Such rules have been adopted. One of them is that an accused 'should not be permitted to use the machinery of one sovereignty to obstruct his trial in the courts of the other, unless the necessary operation of such machinery prevents his having a fair trial.' Ponzi v. Fessenden, 258 U.S. 254, 259 [42 S.Ct. 309, 310, 66 L.Ed. 607]. Another is that federal courts should not exercise their discretionary power 'to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable injury which is both clear and imminent; * * *' Douglas v. City of Jeannette, supra, [319 U.S.] at 163 [63 S.Ct. at page 881].'

"The declaratory judgment prayed by the plaintiffs must also be denied. That procedure we deem inappropriate in the circumstances because the issue of criminal responsibility should be left to the State court. Spence v. Cole, 4 Cir., 137 F.2d 71, 73, supra."

Wilson v. Schnettler, referred to in the above quotation, involved an effort by a prisoner, held in a state jail for trial, to have a federal court suppress certain evidence that was to be used against him. The state court had declined to suppress the evidence. The disposition of the matter by the Supreme Court is suf-

ficiently indicated in the quotation above from Henderson v. Trailway Bus Company.

Douglas v. City of Jeannette, 319 U.S. 157, 63 S.Ct. 877, 87 L.Ed. 1324 (1943), also referred to in the quotation from Wilson v. Schnettler, supra, was a case which arose out of an ordinance of the City of Jeannette, evidently aimed at members of Jehovah's Witnesses, prohibiting the solicitation of orders for merchandise without first procuring a license from the city authorities and paying a license tax. Members of Jehovah's Witnesses instituted the suit to restrain the city and its mayor from enforcing the ordinance after criminal prosecution had been started against them under the ordinance.

The court in that case said:

> "Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger of irreparable injury 'both great and immediate.'"

But petitioners claim that this case is different in that they will probably receive short sentences and will not be allowed bail by the Corporation Court of the City of Danville for a period during which they can perfect an appeal and pending the decision on appeal. But § 19.1-281 of the Code of Virginia expressly provides, in part: "A writ of error from the Supreme Court of Appeals shall lie to any such judgment refusing bail or requiring excessive bail." And we may be certain that in case of a short sentence the Supreme Court of Appeals would act quickly on such a writ.

Petitioners also claim that the Jeannette case is no longer

the law. But in Wilson v. Schnettler, supra, decided in 1961, the Supreme Court quoted with approval from the Jeannette case on this point. In one of the three cases cited by the petitioners to indicate that Jeannette is no longer the law, Evers v. Dwyer, 358 U.S. 202, the point in question was not discussed in the Supreme Court opinion. In another, Gallagher v. Crown Kosher Supermarket, 366 U.S. 617, the point in question was discussed by the court below but not by the Supreme Court.

In the third case relied upon by the petitioners, Browder v. Gayle, 352 U.S. 903 (opinion below at 142 F. Supp. 707), the point was discussed below as follows:

> "The defendants, relying on Alabama Public Service Commission v. Southern Railway Co., 341 U.S. 341, 71 S.Ct. 762, 95 L.Ed. 1002, insist that even if the Federal court has jurisdiction, it should, in its discretion as a court of equity, and for reasons of comoty, decline to exercise such jurisdiction until the State courts have ruled on the construction and validity of the statutes and ordinances. The short answer is that doctrine has no application where the plaintiffs complain that they are being deprived of constitutional civil rights, for the protection of which the Federal courts have a responsibility as heavy as that which rests on the State courts."

The Supreme Court affirmed in a per curiam decision without discussion of this point. It can hardly be believed that in these three decisions, none of which discussed the point, the Supreme Court intended to reverse in such a summary manner the Jeannette case, especially since it has followed the Jeannette decision in the later cases of Wilson v. Schnettler, supra, and Henderson v. Trailway Bus Company, supra.

Under that view, it would appear that the Complaint must be dismissed.

An order will be entered accordingly.

/s/ Thomas J. Michie
United States District Judge

* * * * * * *

4. Order

Plaintiffs having moved this court for a temporary restraining order pursuant to Rule 65(b), and it appearing to this court that the plaintiffs have not exhausted their remedies in the state courts and in any event will not suffer irreparable injury before this matter can be determined on the merits, the motion is

D E N I E D.

ENTER July 11, 1963

/s/ Thomas J. Michie
U. S. District Judge

* * * * * * *

5. Order Dismissing Suit

Defendants having moved this Court for the dismissal of this action on the grounds that conformably with the doctrine of abstention, the Court should refrain from exercising jurisdiction in this case, and after all parties herein had been heard by the Court, and upon due consideration of all arguments and issues by the Court, and it appearing to this Court that such motion of the defendants should be sustained, it is, therefore, ADJUDGED, ORDERED and DECREED that this suit is herewith dismissed.

ENTER July 27, 1963

/s/ Thomas J. Michie
U. S. District Judge

* * * * *

6. Notice of Appeal

Petitioners hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order entered herein on July 11, 1963, denying Temporary Restraining Order and for each and every part of said Order.

/s/ J. L. Williams
of Counsel

* * * * * * *

7. Notice of Appeal

Now come the plaintiffs, THE REV. LENDELL W. CHASE, THE REV. LAWRENCE G. CAMPBELL AND PATRICIA CHASE, in this matter and note an appeal to the United States Court of Appeal for the Fourth Circuit from the final judgment of the District Court of July 27, 1963 dismissing this Suit.

THE APPELLANTS, BY THEIR ATTORNEY

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III

PAPERS IN LEWIS V. BENNETT, No. 9083

1. Complaint

Summation of Pleadings

Starvation faces some of Danville's Negro citizens because of the protest against racial discrimination.

The plaintiffs are unemployed Negro citizens of Danville, Virginia who like many other Negroes of this city, eke out a living from three (3) months of work during the tobacco season.

At other than the tobacco season, the plaintiffs hold themselves together, and those dependent upon them, by odd jobs and such compensation as may be due them from the Virginia Employment Commission.

One of the plaintiffs on June 20, 1963, had this unemployment compensation abruptly cut off. The same thing has happened to others. The reason given for the cut-off of the sole means of income was that the plaintiffs were on bond. The same reason has been given to others as they were denied the thin thread of income that stands between them and starvation.

7. Notice of Appeal

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At other than the tobacco season, the plaintiffs hold themselves together, and those dependent upon them, by odd jobs and such compensation as may be due them from the Virginia Employment Commission.

One of the plaintiffs on June 20, 1963, had this unemployment compensation abruptly cut off. The same thing has happened to others. The reason given for the cut-off of the sole means of income was that the plaintiffs were on bond. The same reason has been given to others as they were denied the thin thread of income that stands between them and starvation.

This action was taken by the Examiner and Director of the Virginia Employment Commission in connection with officials of the City of Danville to punish, coerce and destroy all protest by Negroes against the conditions of segregation. Because of the dependence on these checks, the effect of the denial is to deny all income and make conditions of starvation imminent . . . almost forcing plaintiffs to become beggars or to steal to preserve life.

Jurisdiction

1. Jurisdiction is invoked under the First, Fifth, and Fourteenth Amendments to the United States Constitution, Title 28 United States Code §§ 2201, 2202, Title 42 United States Code §§ 1981, 1982, 1983, 1984, 1985 et seq.

2. The matter in controversy exceeds the sum or value of $10,000.00 exclusive of costs and interests.

Plaintiffs

3. That plaintiffs are Negro citizens of the City of Danville, Virginia and the United States. They bring this action for themselves and all others similarly situated pursuant to Rule 23 (2) (3) of the Federal Rules of Civil Procedures.

Defendants

4. L. D. Bennett is the Director of the Danville Branch of the Virginia Employment Commission.

5. Russell L. Hines is the Examiner of the Danville Branch of the Virginia Employment Commission.

6. The Honorable Anthony J. Celebreeze is Secretary of the Department of Health, Education and Welfare of the United States. He is only a nominal party and is named solely because the money, all of the money, disbursed--or in the instant case withheld--comes from the United States; Danville being so economically

depressed that it receives 100% parity from the United States Government.

Actual, Substantial and Urgent Controversy

7. On or about the 1st of June, 1963, certain Negroes of Danville, feeling that their only means for protest against racial segregation, and that their only means of obtaining correction of what they considered an evil, was to peacefully protest in public, began peaceful demonstrations in Danville.

8. The officials of the City reacted negatively to this peaceful protest and began arresting those considered to be the leaders.

9. The arrests then continued and went to all levels of those protesting and often against those not protesting. Demonstrating Negroes, Negro spectators at the demonstrations, and just plain Negroes were arrested--wholesale.

10. The plaintiff, Joe Wesley Lewis, was arrested on or about 11 June, 1963, and is awaiting his day in court.

11. On 20 June 1963, when the plaintiff Lewis appeared at the Virginia Employment Commission in Danville to secure his unemployment check he was informed by the defendants Bennett and Hines that he was ineligible to receive further compensation because he was on bond awaiting trial.

12. That on information, plaintiffs believe that there are more than thirty (30) persons, Negroes like the plaintiffs, who have likewise been denied their lawful compensation solely because of their race.

13. That by this action, the defendants Bennett and Hines, unlawfully are in effect denying food, clothing and shelter to the plaintiffs and all others similarly situated.

14. That without the unemployment checks the plaintiffs

cannot eat, pay rent or otherwise provide for their families.

15. That the plaintiffs and other similarly situated are extremely poor and cannot survive. That Danville is an extremely economically depressed area as far as Negroes are concerned because of the scarcity of jobs available to Negroes in the area.

16. That the acuteness of the job problem for Negroes is ably illustrated by the fact that the City of Danville does not even have a Negro garbage truck driver, a job traditionally relegated to Negroes in southern communities.

Immediate and Grievous Injuries

17. That unless the Court acts at once, further denials of plaintiffs' rights will occur.

18. That denied these lawful rights to compensation, these plaintiffs are crushed in spirit and the effect is to stifle all peaceful protest by other Negroes against racial segregation, contrary to the First Amendment to the United States Constitution.

19. That the denial of this lawful income makes the plaintiffs and others desperate persons with virtually no source of income to prevent severe economic deprivation and possibly starvation.

20. That unless the Court acts at once in such a manner as to secure the continued supply of food for the plaintiffs that they may not be in a position to receive the benefits of any change brought about at a later date when a full hearing can be had on this justifiable grievance.

21. That immediate relief is needed because the hunger of families cannot endure the normal slow time table of the legal process.

22. That said actual, and promised future conduct by the defendants Bennett and Hines violates the rights of plaintiffs

under the First, Fifth and Fourteenth Amendments to the United States Constitution.

Relief Prayed For

1. That the Court issue an immediate temporary restraining order against the defendants to halt the practices of denying unemployment compensation to the plaintiffs and all others similarly situated: those on bail and awaiting trials.

2. That the Court, after holding a preliminary hearing, issue a temporary injunction which at the appropriate time can be made permanent halting all further denials designed to end protest of Negroes against conditions they consider unjust, denials of unemployment compensation.

3. That the Court grant unto each plaintiff the sum of $11,000.00 in compensatory and punitive damages against the defendants Bennett and Hines.

4. That the Court grant such other and further relief as justice may require.

* * * * * * *

2. Order

Plaintiffs having moved this court for a temporary restraining order pursuant to Rule 65(b), and it appearing to this court that the plaintiffs have not exhausted their remedies in the state courts and in any event will not suffer irreparable injury before this matter can be determined on the merits, the motion is

D E N I E D.

ENTER July 11, 1963

/s/ Thomas J. Michie
U. S. District Judge

* * * * * * *

3. Notice of Appeal

Petitioners hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order entered herein on July 11, 1963, denying Temporary Restraining Order and for each and every part of said Order.

/s/ J. L. Williams
By Counsel

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IV

PAPERS IN CHASE V. AIKEN, NO. 9084

1. Complaint

The Reverend Lendell W. Chase and the other named plaintiffs file this Complaint under the Federal Declaratory Judgment Act, 28 U.S.C. Sec. 2201 and 2202, against the named defendant and aver:

JURISDICTION

Jurisdiction of this Court is invoked under the First and Fourteenth Amendments to the United States Constitution; Title 28, U. S. Code, Sections 2201 and 2202; Title 28, U. S. Code, Section 1343 (3); Title 42 U. S. Code, Sections 1981, 1982, 1983, 1984, and 1985; and amended.

PARTIES

1. The plaintiffs are Negro citizens of the City of Danville, Virginia, and bring this action for themselves and for all others similarly situated, pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure.

2. The defendant is Judge of the Corporation Court of the City of Danville, Virginia.

ACTUAL AND SUBSTANTIAL CONTROVERSY

1. On June 6, 1963, the defendant, Honorable Archibald M. Aiken, issued the temporary injunction and restraining order here in question (appended hereto and made a part of this Complaint).

2. The plaintiffs, all of whom are members of the Negro race, are charged with violation of the aforesaid Temporary Injunction and Restraining Order.

3. That said Temporary Injunction and Restraining Order is in violation of the civil rights of said plaintiffs hereto as prohibited by subsections 1 and 2 of Section 1443, Title 28, United States Code, and are therefore subject to removal of this Court pursuant to the provisions of said statute.

4. That the aforesaid Temporary Injunction and Restraining Order violates the Constitution of the United States and the Amendments thereto by making criminal conduct which is protected by the First, Fifth and Fourteenth Amenements fo the Constitution of the United States and other Amendments thereto.

5. That plaintiffs are denied and/or cannot enforce in the Courts of the State of Virginia rights under the Constitution and laws of the United States providing for the equal rights of citizens of the United States and all persons within the jurisdiction thereof, and/or are being prosecuted for acts under color of authority derived from the Constitution and laws of the United States.

6. That, in particular, plaintiffs are being prosecuted for demonstrating upon the streets of Danville, Virginia, in protest against certain laws, practices and customs seeking to perpetuate the practice of segregation of the races, and for engaging

in other lawful forms of peaceful protests against such laws, practices and customs.

7. That on June 17, 1963, a petition was filed in the United States District Court for the Western District of Virginia to remove all proceedings under the Temporary Injunction and Restraining Order from the Corporation Court of the City of Danville, Virginia. All contempt proceedings under the Temporary Restraining Order heard by the defendant after the above mentioned petition for removal was filed are utterly void, as the defendant was, by the removal, completely divested of jurisdiction, 28 U. S. Code, Sections 1443 and 1446 (e).

IMMEDIATE AND IRREPARABLE INJURY

1. The existence of this Injunction has and will continue to deny these plaintiffs their constitutional rights of free speech and assembly unless this Court grants the requested relief.

2. A declaration of the constitutional rights of these plaintiffs would halt further unconstitutional mass arrests under the Temporary Injunction and Restraining Order.

3. A declaration of the rights of these plaintiffs to peacefully speak and assemble would permit these plaintiffs to repose continued faith in the safeguards and protection of the law.

4. Unless the requested relief is granted, these plaintiffs will continue to face arrest and confinement in jail.

5. Unless the requested relief is granted, these plaintiffs, by unconstitutional confinement, would suffer loss of income to the detrement of themselves and their families.

6. Unless the requested relief is granted, these plaintiffs and others similarly situated will not be able to fully enjoy the public streets and facilities as well as the peace and tranquility of citizens insured by the Constitution.

RELIEF PRAYED

1. That the Court immediately issue a Temporary Restraining Order to halt further arrests and prosecutions under the said Temporary Injunction and Restraining Order issued by the defendant on June 6, 1963.

3. That the Court declare said Temporary Injunction and Restraining Order issued by the defendant on June 6, 1963, unconstitutional and discharge all persons arrested thereunder.

STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

I, Lendell W. Chase, one of the plaintiffs in this action, after first being sworn and put under oath, do say that I have read the foregoing pleadings and that they are true to the best of my belief and knowledge...showing unto the Court the terrible conditions that exist in Danville, Virginia, where the aforementioned defendant in this suit is perpetrating denials of due process and equal protection on the Negro citizens of Danville which defy description in temperate language.

A P P E N D I X

IN THE CORPORATION COURT OF THE CITY OF DANVILLE, VIRGINIA

THE CITY OF DANVILLE, VIRGINIA
a Municipal Corporation chartered
under the laws of the Commonwealth
of Virginia
Plaintiff

V.

LAWRENCE GEORGE CAMPBELL, et als
Defendants

ORDER AWARDING TEMPORARY INJUNCTION AND RESTRAINING ORDER

This day came the plaintiff, by Counsel, and presented to the Court its motion for a Temporary Injunction and Restraining

Order, which motion was verified and upon the presentation and consideration of said verified motion and affidavit of T. Edward Temple, City Manager of the City of Danville;

Upon due consideration whereof it appearing to the Court that the plaintiff herein is entitled to the Temporary Injunction and Restraining Order prayed for and that under the circumstances of this case, no notice to said named defendants herein is necessary or practicable, it is ADJUDGED, ORDERED and DECREED as follows:

1. That said named defendants, their servants, agents and employees, their attorneys and all other persons acting in concert therewith be, and they hereby are, enjoined and restrained until the further order of this Court from participating in the following actions or conduct:

(a) unlawfully assembling in an unauthorized manner on the public streets and in the vicinity of the public buildings of the City of Danville;

(b) Unlawful interference with the lawful operation of private enterprises and businesses in the City of Danville;

(c) Unlawfully obstructing the freedom of movement of the general public of the City of Danville and the general traffic of the City of Danville;

(d) Unlawfully obstructing the entrances and exits to and from both private business concerns and public facilities in the City of Danville;

(e) Participating in and inciting mob violence, rioting and inciting persons to rioting;

(f) Unlawfully carrying deadly weapons, threatening to use said deadly weapons, assaulting divers citizens of this community;

(g) Unlawfully using loud and boisterous language interrupting the peace and repose of the citizens of the community; business establishments of the community and the public works of the community;

(h) Creating and maintaining a public nuisance by reason of unlawful and unauthorized gatherings and loud, boisterous and concerted demonstrations interfering with the peace and quiet and enjoyment of the citizens of the City of Danville.

2. This Temporary Injunction and Restraining Order shall be effective immediately and shall continue from day to day until the further order of this Court until July 6, 1963, at which time it shall stand dissolved unless prior thereto it be enlarged or further temporary or permanent injunction granted herein.

3. And that a copy of this Order be served upon the named defendants herein.

* * * * * * *

2. Order Denying Temporary Relief

Plaintiffs having moved this court for a temporary restraining order pursuant to Rule 65(b), and it appearing to this court that the plaintiffs have not exhausted their remedies in the state courts and in any event will not suffer irreparable injury before this matter can be determined on the merits, the motion is

D E N I E D.

ENTER July 11, 1963

/s/ Thomas J. Michie
U. S. District Judge

* * * * * * *

3. Notice of Appeal

Petitioners hereby appeal to the United States Court of Appeals for the Fourth Circuit from the Order entered herein on July 11, 1963, denying Temporary Restraining Order and for each and every part of said Order.

/s/ J. L. Williams
Of Counsel

* * * * * * *

4. Opinion

This suit, like Chase v. McCain, C. A. 575 - Danville in which an opinion was filed July 18, 1963, is one of the numerous suits growing out of the "demonstrations" that occurred in Danville in June and July.

On June 6, 1963 the defendant, the Honorable Archibald M. Aiken, Judge of the Corporation Court of the City of Danville, entered a temporary injunction which enjoined Lawrence George Campbell and others from certain specified unlawful acts in connection with the demonstrations or the creation and maintenance of a public nuisance by reason of unlawful and unauthorized gatherings and loud, boisterous and concerted demonstrations interfering with the peace and quiet and enjoyment of the citizens of the city of Danville.

The bill of complaint alleges that the plaintiffs are charged with the violation of said temporary injunction and asks that a temporary injunction and restraining order issue from this Court restraining Judge Aiken from enforcing his injunction and halting further arrests and prosecutions under the injunction and further that the injunction be declared unconstitutional and that all persons arrested thereunder be discharged.

I am advised by some of counsel and also learn from the newspapers that, since the filing of this suit, the state court temporary injunction has been made permanent but its form and, and apparently, to some extent its substance have been quite substantially altered. Evidence was heard in the case on June 24th, the case was argued on July 9th, and the Court directed that briefs be filed by the parties by July 31st. The defendant filed such a brief on time. The plaintiffs failed to file a brief and now state that they do not wish to do so. Further, in view of the change in the terms of the injunction made when it was made permanent, this Court suggested to the plaintiffs that possibly an amended bill of complaint should be filed setting forth the terms of the permanent injunction since the temporary injunction is no longer in effect. This the plaintiffs also declined to do.

It would appear under the circumstances that an order should be entered dismissing this proceeding with prejudice.

There are three reasons for this:

In the first place, the question as originally presented has become moot by the rather radical alteration in the terms of the original state court temporary injunction made when the permanent injunction was entered and the refusal of the plaintiffs to amend their bill of complaint.

In the second place, 28 USC ¶2283 provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

My attention has been called to no Act of Congress expressly authorizing the issuance of an injunction against a state court under these circumstances and I have been unable to find any such Act. And certainly no such injunction is here necessary in aid

of the jurisdiction of this Court or to protect or effectuate any of its judgments.

And in the third place, even if the statute did not exist, this Court would feel bound to refrain from so interfering with the proceedings in a state court for the reasons fully set forth in the opinion filed July 18, 1963 in the case of Chase v. McCain, C. A. 575 - Danville, which the Court deems unnecessary to repeat in this case.

The complaint will be dismissed with prejudice.

/s/ Thomas J. Michie
U. S. District Judge

* * * * * * *

5. Order Awarding Permanent Injunction in Corporation Court

This cause came on this day to be heard upon the bill and its exhibits; upon the answer of the defendants to said bill; upon evidence taken in open Court; upon the defendants' motion to dissolve said injunction and to dismiss the plaintiff's bill; and upon argument of Counsel. Upon consideration of all of which the Court is of the opinion, and doth so ADJUDGE, ORDER and DECREE that the plaintiff is entitled to the relief prayed for in its said bill.

It is therefore, ADJUDGED, ORDERED and DECREED that the injunction heretofore awarded in this cause restraining Lawrence George Campbell, Alexander Isiah Dunlap, Julious Emanuel Adams, Arthur Pinchback, Jr. nnd all persons similarly situated and their agents, servants, employees and attorneys and all persons in active concert and participation with them, from co mmitting certain unlawful acts, all as mentioned in said bill and order of temporary

injunction, be, and the same is hereby, made perpetual.

And it is further ADJUDGED, ORDERED and DECREED that the said Lawrence George Campbell, Alexander Isiah Dunlap, Julious Emanuel Adams, Arthur Pinchback, Jr. and all persons similarly situated and their agents, servants, employees and attorneys and all persons in active concert and participation with them be, and they are, and each of them is, perpetually enjoined from engaging in and participating in the following actions and conduct:

1. Obstructing vehicular and pedestrian traffic by marching and congregating in such a manner as to impede the normal flow of either vehicular or pedestrian traffic; and,

2. Obstructing the use, enjoyment, ingress or egress of public facilities and public buildings of the City of Danville, or obstructing the use, enjoyment or ingress or egress of private property; and,

3. From committing assaults or injuries upon any persons, and from damaging or injuring any property whatsoever, private or public; and,

4. From creating unnecessarily loud, objectionable, offensive and insulting noises, which are designed to upset the peace and tranquility of the community; and,

5. From inciting any persons to, or participating in, any riot or violation of the laws of the Commonwealth of Virginia or the City of Danville designed to maintain the public peace within the City of Danville; and,

6. From engaging in any act in a violent and tumultous manner or holding unlawful assemblies such as to unreasonably disturb or alarm the public within the City of Danville; and,

7. From participating in, financing, sponsoring, encouraging or engaging in meetings or other activities whereby the violation

of the laws of the Commonwealth of Virginia, City of Danville or the terms of this injunction order are suggested, advocated or encouraged; and

8. From participating in and inciting mob violence, rioting and inciting persons to riot.

It is further ORDERED that a certified copy of this order be served upon each of said defendants upon whom service may be had.

* * * * * * *

6. Order Dismissing Suit With Prejudice

Defendant, having moved this Court for dismissal of his action on the grounds of comity in that conformably with the doctrine of abstention, the Court should refrain from exercising jurisdiction in this case, and upon further motion of the defendant that the Court is without jurisdiction, pursuant to 28 U.S.C., Section 2283, and that further, the Court is of the opinion that the question involved become moot, and after all the parties herein had been heard by the Court and have been thereupon having been heard, and upon due consideration of all arguments and issues by the Court, it appearing to this Court that the motions of the defendant should be sustained, it is, therefore adjudged, ordered and decreed that this suit is herewith dismissed with prejudice.

ENTERED this 15th day of August, 1963.

THOMAS J. MICHIE,
District Judge.

* * * * * * *

7. Notice of Appeal

Now come the plaintiffs, THE REV. LENDELL W. CHASE, THOMAS HOLT AND JAMES DIXON, in this matter and note an appeal to the United States District Court of Appeal for the Fourth Circuit Court from the final judgment entered in this court dismissing the case.

* * * * * * *

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above named defendants appear in person and by their attorney before the Judge of the Circuit Court of Cumberland County on the fourth Monday of September, 1963 to-wit, September 23, 1963, at 10:00 A. M. And the bonds of each of the said defendants are continued in full force and effect for the appearance of each of the said defendants before the Circuit Court of Cumberland County, Virginia, on Monday, September 24, 1963.

And it is further ordered by the Court that the Clerk of this Court forward a copy of this order to the Clerk of the Circuit Court of Cumberland County to be by him spread in the minutes of the Order Book of the Circuit Court of Cumberland County.

(b) Corporation Court of Danville, on Thursday, the 8th day of August, in the year 1963.

Commonwealth of Virginia, Plaintiff,

against

Violation of the Temporary Injunction and Restraining Order of the Corporation Court of Danville of June 6, 1963

Bruce Baines, Joseph Bowe, Cynthia Ann Carter, Hazel Phyllis Carter, James Dixon, Jr., Abraham Glass, Joseph Benjamin Hairston, Leatrice Ann Hairston, Jimmie Hamlett, Laverne Hankins, Violet Howard, Lillie Echols Hubbard, General Redd, William Edward Richardson, Percy Randolph Williams, Harry Wilson, Jr., Margie Ann Wilson, Doyle J. Thomas, Paul Wade, Jr.

Defendants.

This day came again the Attorney for the Commonwealth, and the Court having maturely considered the written motion of the Attorney for the Commonwealth filed in the above-named cases, to change the venue of the trials of the named defendants to the Circuit Court of Russell County, Virginia, on the grounds stated in said written motion, doth sustain said motion, the defendants, by counsel, excepting to the action of the Court in sustaining said motion.

Therefore, the Court pursuant to the provisions of Section 19.o-224 of the Code of Virginia, 1950, as amended, for good cause shown, doth order and direct that the trials of the defendants herein above named be transferred to the Circuit Court of Russell County for trials to be had thereon.

The Court doth further order and direct that all the papers in each of the above-styled cases including the bonds of the said defendants be transferred to the Circuit Court of Russell County, Virginia.

The Court doth further order and direct that each of the above-named defendants appear in person and by their Attorney before the Judge of the Circuit Court of Russell County on the second Monday in November, 1963, to-wit, November 11, 1963, at 10:00 A.M. And the bonds of each of the said defendants are continued in full force and effect for the appearance of each of the said defendants before the Circuit Court of Russell County, Virginia, on Monday, November 11, 1963.

And it is further ordered by the Court that the Clerk of this Court forward a copy of this order to the Clerk of the Circuit Court of Russell County, Virginia, to be by him spread in the minutes of the Order Book of the Circuit Court of Russell County, Virginia.

(c) Corporation Court of Danville on Thursday, the 8th day of August, in the year 1963.

Commonwealth of Virginia, Plaintiff,

against Violation of the Temporary Injunction and Restraining order of the Corporation Court of Danville of June 6, 1963.

Kenneth Lisberg Lewis, Howard Lee Logan, Sallie Ann Logan, Myrtle Mason, Julia Ferguson Moore, Rosetta Powell, Lonnie McKinley

Saunders, Blondine Odessa Scales, Don Marie Scales, Dorothy James Scales, Earnestine Scott, Geraldine Lee Scott, Rebecca Grasty Wilson, Pasadena Woods,

Defendants.

This day came again the Attorney for the Commonwealth, and the Court having maturely considered the written motion of the Attorney for the Commonwealth filed in the above-named cases, to change the venue of the trials of the named defendants to the Circuit Court of Fairfax County, Virginia, on the grounds stated in said written motion, doth sustain said motion, the defendants, by counsel, excepting to the action of the Court in sustaining said motion.

Therefore, the Court pursuant to the provisions of Section 19.o-224 of the Code of Virginia, 1950, as amended, for good cause shown, doth order and direct that the trials of the defendants herein above named be transferred to the Circuit Court of Fairfax County at Falls Church, Virginia for trials to be had thereon.

The Court doth further order and direct that all the papers in each of the above-styled cases including the bonds of the said defendants be transferred to the Circuit Court of Fairfax County, Virginia.

The Court doth further order and direct that each of the above-named defendants appear in person and by their Attorney before the Judge of the Circuit Court of Fairfax County on the third Monday in November, 1963, to-wit, November 18, 1963, at 10:00 A.M. And the bonds of each of the said defendants are continued in full force and effect for the appearance of each of the said defendants before the Circuit Court of Fairfax County, Virginia, on Monday, November 18, 1963.

And it is further ordered by the Court that the Clerk of

this Court forward a copy of this order to the Clerk of the Circuit Court of Fairfax County, Virginia, to be by him spread in the minutes of the Order Book of the Circuit Court of Fairfax County, Virginia.

(d) Corporation Court of Danville on Thursday, the 8th day of August, in the year 1963.

Commonwealth of Virginia, Plaintiff,

against Violation of the Temporary Injunction and Restraining Order of the Corporation Court of Danville of June 6, 1963

Clarence Lewis Bowe, William Burrell Canada, Jr., Claudia Anne Chaney, Connie Lavonne Chaney, Elmora Elizabeth Ellis Chase, Patricia Glendora Chase, Lelia Virginia Clarke, Edith Mary Coleman, Elizabeth Davis, Cynthia Ann Dawson, Thelma Farmer Echols, Claudia Jean Edwards, ERnest David Ferguson, Joylette Camilla Glass, Lorraine Glass

Defendants.

This day came again the Attorney for the Commonwealth, and the Court having maturely considered the written motion of the Attorney for the Commonwealth filed in the above-named cases, to change the venue of the trials of the named defendants to the Corporation Court of the City of Bristol, Virginia, on the grounds stated in said written motion, doth sustain said motion, the defendants, by counsel, excepting to the action of the Court in sustaining said motion.

Therefore, the Court pursuant to the provisions of Section 19.o-224 of the Code of Virginia, 1950, as amended, for good cause shown, doth order and direct that the trials of the defendants herein above named be transferred to the Corporation Court of the City of Bristol for trials to be had thereon.

The Court doth further order and direct that all the papers in each of the above-styled cases including the bonds of the said defendants be transferred to the Corporation Court of the City of Bristol, Virginia.

The Court doth further order and direct that each of the above-named defendants appear in person and by their Attorney before the Judge of the Corporation Court of the City of Bristol on the first Monday in November, 1963, to-wit, November 4, 1963 at 10:00 A.M. And the bonds of each of the said defendants are continued in full force and effect for the appearance of each of the said defendants before the Corporation Court of the City of Bristol, Virginia, on Monday, November 4, 1963.

And it is further ordered by the Court that the Clerk of this Court forward a copy of this order to the Clerk of the Corporation Court of the City of Bristol, Virginia, to be by him spread in the minutes of the Order Book of the Corporation Court of Bristol, Virginia.

(e) Corporation Court of Danville, on Thursday, the 8th day of August, in the year 1963.

Commonwealth of Virginia, Plaintiff,

against Violation of the Temporary Injunction and Restraining Order of the Corporation Court of Danville of June 6, 1963.

Sylvester Burrell, Harvey Davis, Jr., Mabel Graves, Sylvester Graves, Ennis Hairston #1, Jesse Hairston, Ola Mae Cunningham Harris, Smith Harvey alias Harvey Smith, Robert Hemphill, Jr., Leonard Winston Holt, Annie Mae Johnson, Joe Wesley Lewis, Otha Frank Lumpkin, Stuart Mingo, Robert Morton, Daniel McCain, Paul Price, Marcellous Reeves, Alberta Via Tanner, Shirley Terry, Willie Ulysses Thomas, and Averett Thompson,

Defendants.

This day came again the Attorney for the Commonwealth, and the Court having maturely considered the written motion of the Attorney for the Commonwealth filed in the above named cases, to change the venue of the trials of the named defendants to the Circuit Court of Buchanan County, Virginia, on the grounds stated in said written motion, doth sustain said motion, the defendants,

by counsel, excepting to the action of the Court in sustaining said motion.

Therefore, the Court, pursuant to the provisions of Section 19.1-224 of the Code of Virginia, 1950, as amended, for good cause shown, doth order and direct that the trials of the defendants herein above named be transferred to the Circuit Court of Buchanan County for trials to be had thereon.

The Court doth further order and direct that all the papers in each of the above-styled cases, including the bonds of the said defendants, be transferred to the Circuit Court of Buchanan County, Virginia.

The Court doth further order and direct that each of the above named defendants appear in person and by their attorney before the Judge of the Circuit Court of Buchanan County on the second Monday of October, 1963, to-wit, October 14, 1963, at 10:00 A.M. And the bonds of each of the said defendants are continued in full force and effect for the appearance of each of the said defendants before the Circuit Court of Buchanan County, Virginia, on Monday, October 14, 1963.

And it is further ordered by the Court that the Clerk of this Court forward a copy of this order to the Clerk of the Circuit Court of Buchanan County, Virginia, to be by him spread in the minutes of the Order Book of the Circuit Court of Buchanan County, Virginia.

(f) Corporation Court of Danville, on Thursday, the 8th day of August, in the year 1963.

Commonwealth of Virginia, Plaintiff,

against Violation of the Temporary Injunction and Restraining Order of the Corporation Court of Danville of June 6, 1963

Geneva Rogers Davis, Lizzie Spivey Davis, John Doe (James Coleman) Daniel Aaron Foss #2, Isiah Hall, Thomas Cleveland Holt, Celster Lindsey, Walter Link, Edna Rose Lynn, Dorothy Elizabeth Moore, Alice Lee Strader, Larry Jerome White, Eddie Mae Womack, and Estelle Womack,

Defendants.

This day came again the Attorney for the Commonwealth, and the Court having maturely considered the written motion of the Attorney for the Commonwealth filed in the above named cases, to change the venue of the trials of the named defendants to the Circuit Court of Lee County, Virginia, on the grounds stated in said written motion, doth sustain said motion, the defendants, by counsel, excepting to the action of the Court in sustaining said motion.

Therefore, the Court pursuant to the provisions of Section 19.1-224 of the Code of Virginia, 1950, as amended, for good cause shown, doth order and direct that the trials of the defendants herein above named be transferred to the Circuit Court of Lee County for trials to be had thereon.

The Court doth further order and direct that all the papers in each of the above-styled cases including the bonds of the said defendants be transferred to the Circuit Court of Lee County, Virginia.

The Court doth further order and direct that each of the above named defendants appear in person and by their attorney before the Judge of the Circuit Court of Lee County on the first Monday of December, 1963, to-wit, December 2, 1963, at 10:00 A.M. And the bonds of each of the said defendants are continued in full force and effect for the appearance of each of the said defendants before the Circuit Court of Lee County, Virginia, on Monday, December 2, 1963.

And it is further ordered by the Court that the Clerk of this Court forward a copy of this order to the Clerk of Circuit Court of Lee County, Virginia, to be by him spread in the minutes of the Order Book of the Circuit Court of Lee County, Virginia.

* * * * * * *

2. Order Entered by Court of Appeals in all Cases on August 8, 1963.

These matters came on for hearing upon the motion of the plaintiffs for an order restraining and enjoining the prosecution of all proceedings in any of the state courts of Virginia for alleged violations of Ordinance No. 63-6.2 of the City of Danville, Virginia, and for contempt arising out of alleged violations of the injunctive orders, temporary and permanent, passed on June 6, 1963, and August 3, 1963, by the Corporation Court of the City of Danville, Virginia, in the matter of the City of Danville, Virginia, versus Campbell, et al.

The plaintiffs in the District Court challenged the constitutionality of the ordinance and the temporary injunction order, mentioned above. Meanwhile some of the criminal prosecutions founded upon the ordinance were removed to the District Court. Thereafter the District Court refused the requested injunctive relief and remanded to the state court the removed criminal proceedings. The plaintiffs by appeal seek review of the District Court's order in all of these cases.

In support of the plaintiffs' motion for emergency relief, affidavits have been filed showing that all the criminal proceedings have been set for trial and one or more have been tried. Earlier, when several persons had been convicted and sentenced to

effective jail terms of 45 - 90 days, they had been denied bail in the state court pending appeal, making impossible effective appellate review in the state courts of the constitutionality of the injunction and ordinance. Moreover, present trial and conviction of others among the persons charged with violation of the ordinance and injunction would moot their appeals in this court if they are required to serve their sentences before these cases can be heard and determined in this court. Should some or all of them be granted bail after conviction and pending appeal, they would be put to the expense of an appeal through the state courts while the same constitutional questions are pending in this court. On the other hand, hasty trials, if the convicted defendants are to be released on bail pending appeal serve no obvious purpose in aid of necessary maintenance of law and order.

Even more burdensome to many of the plaintiffs is the fact that, over their objections, some of their contempt charges have been transferred to other courts of Virginia, some as much as 200 miles from Danville, to which they must go and transport their witnesses if they are to defend themselves. Under those circumstances there is no adequate legal remedy in the state courts which, if one existed, might stay our hand.

In these circumstances this court can tolerate neither an interference with proper functioning of law enforcement officers in the maintenance of the public peace of Danville nor the nullification of constitutional rights of persons charged with the violation of the ordinance and the injunctive orders of the Corporation Court of Danville by permitting trials and punishments to be inflicted before the challenges to the validity of said ordinance and injunctive orders can be adjudicated in the appeals pending in this court.

Under all of the circumstances it appears that temporary relief is necessary to protect the jurisdiction of this court pending disposition of the appeals before us and to avoid irreparable injury.

Upon consideration, after hearing counsel for the parties, it is this 8th day of August, 1963, ordered that Eugene Link, Commonwealth Attorney, and T. F. Tucker, Clerk, Corporation Court, Danville, Virginia, and all persons acting in concert with them or by their authority are hereby restrained and enjoined from bringing to trial any person for the alleged violation of said ordinance of the City of Danville and the injunctive orders of the Corporation Court of the City of Danville until the determination of the above appeals which have been set for hearing at the term of this court beginning on the 23rd day of September next.

It is further ordered that either party may seek upon a proper showing any change or modification of this order that may be deemed necessary or just pending said hearing.

/s/ Simon E. Sobeloff
Chief Judge, Fourth Circuit

/s/ Clement F. Haynsworth, Jr.
United States Circuit Judge

/s/ Jeff Spencer Bell
United States Circuit Judge

3. Affidavits Submitted to Court of Appeals in Support of Application for Temporary Relief

(a)
STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

This day personally appeared before me, Delores J. Page, a Notary Public in and for the City of Danville in the State of Virginia, L. W. Holt and J. L. Williams, who stated under oath as follows:

1. That on July 16, 1963, two hundred thirty-four (234) people were under arrest for alleged violation of the Injunction issued on June 6, 1963. Of this number, approximately one hundred (100) were in jail. Because of the difficulties in securing bail money, all but three or four (3 or 4) of them could not get out. Bail amounts ranged from one hundred fifty dollars ($150) in the Juvenile Court up to five thousand dollars ($5,000) in the Corporation Court.

Julius Adams, a Danville taxi cab driver, was arraigned on three (3) counts and had to post bond in each, all stemming from a single act of transporting pickets; and,

2. That on July 18, 1963, the Virginia Employment Commission declared eleven (11) demonstrators ineligible for Unemployment Compensation benefits. Since these eleven (11) persons were on bail awaiting trial, they were disqualified under the State regulations.

On the same day, three (3) demonstrators were convicted in Municipal Court for trespassing. One (1) was fined fifty dollars ($50.00) for trespassing at Howard Johnson's.

A minister, William Gray, who had been arrested a month before under 18.1-422 of the State Code for "Conspiring to incite

the colored population to insurrection against the white population," had his case again continued. His Counsel's Motion for an immediate hearing in Police Court was again denied.

Two (2) persons were charged with violating the new City Ordinance on picketing and violating the Injunction of June 6, 1963; and,

3. That on July 19, 1963, the plaintiff's application for a Temporary Restraining Order and Injunction of the prosecution of cases under the Ordinance on picketing and the Injunction from the Federal District Court for the Western District of Virginia was denied. The Grand Jury in Danville was reconvened to study the possibility of new indictments against civil rights demonstrators. The grand jury had been convened on two (2) earlier occasions and had turned out fourteen indictments for violation of 18.1-422 of the Virginia Code.

Danville Police Chief McCain issued a letter reported in the July 19 edition of the Danville Bee warning that youths participating in demonstrations were building a police record that would haunt them for life, and cautioned county residents that such participation could lead to jail where they might remain when the tobacco processing factories resumed operations later in the month; and,

4. That on Saturday, July 20, 1963, six (6) pickets appeared downtown. It was the first demonstration of any sort in five (5) days. The six (6) were comprised of three (3) teenagers and three (3) adults. A total of nineteen (19) charges were preferred against the three (3) adults. Each was charged with violating a City Picketing Ordinance, violating a State Picketing law and the Corporation Court Injunction of June 6. Each of these charges was under the jurisdiction of a different Court.

Bonds for each adult were required by each Court. They totaled twenty-five hundred dollars ($2,500) for each; and,

5. That on July 22, 1963, six (6) Negro ladies were convicted in Municipal Court for violating a State Picketing Ordinance and trespassing. Each was fined fifty dollars ($50.00) and thirty (30) days imprisonment on each of the two (2) counts. L. W. Holt, Attorney for the defendants, sought to have their bonds reduced from four hundred dollars ($400.00) because of the inability of the accused ladies to raise bail, pending appeal to Corporation Court. His Motion was denied.

Hester Womack and Rev. W. J. Toomer were arrested and charged with waving at prisoners in the City Jail seconds after Womack and Toomer had been denied the right to visit those incarcerated; and,

6. That on July 23, 1963, hearings on twelve (12) demonstrators on a total of twenty-five (25) charges started in Municipal Court.

Two (2) other persons were fined twenty-five dollars ($25.00) each for obstructing the sidewalk and combining to injure business and trade by advocating boycott on their posters. A vagrancy charge against one was dismissed. The cases of seventy (70) demonstrators charged with violating the City Picketing Ordinance (which is the subject of Chase v. Aiken No. 9084 before the Court of Appeals) originally set for August 16, 1963 were moved up to July 30, 1963, in Municipal Court.

The trials of two hundred thirty-four (234) persons charged with violation of the Injunction of June 6, was scheduled to begin on July 26, 1963 in Corporation Court. At that time, over one hundred (100) of the defendants in both Courts were in jail for nearly two (2) weeks.

Hester Womack, a barber shop operator of 324 Bradley Road, was fined ten dollars ($10.00) and cost for waving to prisoners at City Jail through a window; and,

7. That on July 24, 1963, in Municipal Court, three (3) were fined five dollars ($5.00) for violation of the City Picketing Ordinance and fifty dollars ($50.00) for violation of Section 59.21.1 of the Virginia Code, combining with others to injure the reputation, trade, business or profession of another.

Three (3) were fined one hundred fifty dollars ($150) and ninety (90) days in jail each for violation of State Picketing law, trespassing on a department store and 59.21.1 of the State Code.

Two ministers were fined twenty-five dollars ($25.00) each for City Picketing violations.

Another person was fined fifty dollars ($50.00) and sentenced to thirty (30) days for violation of State Picketing law.

When city officials received notification that the Court of Appeals would not take up consideration of the Injunction until September 23, the reaction of the Danville officials was immediately noted in the Danville Register.

On July 25, the Danville Register quoted City Manager, T. E. Temple, as saying he "couldn't believe the good news at first" and was "highly gratified." That the ruling was construed by Danville officials as a license for stepped up arrests, convictions and harassment was hinted by a statement by Mayor Stinson quoted by the Richmond Times on July 25. The Mayor was quoted as saying that the two month interval ahead left by the Federal Court "ought to just about give us time to clean house." (Emphasis supplied).

City Attorney James A. H. Ferguson was quoted as saying that Danville was now "free to proceed with the cases."

Two (2) charges against Julius Adams for inducing others to trespas at Raylass Department Store were withdrawn by the Commonwealth Attorney; and,

8. That on July 25, 1963, the Danville Register stated in an article that:

> "Police Chief, E. G. McCain, cautioned yesterday that anyone violating the Injunction will be arrested and he warned that those persons from out of town will be the first arrested."
>
> "Chief McCain said police have ready two dozen still and movie cameras and personnel trained to use them. The cameras will be used Sunday he said."
>
> "Those who participate in unlawful acts will either be arrested during the commission of these unlawful acts, or at a later date after they have been identified from the pictures, McCain said."
>
> "Chief McCain cautioned county residents in particular that participation in a demonstration could lead to their going to jail and not being able to harvest tobacco or report to work when tobacco processing factories begin operations in the coming weeks."
>
> "He noted that most of those arrested since Martin Luther King's last visit here still are in jail, apparently because of inability to raise bond."

On the same day in the Danville Bee, it was reported that Chief McCain said he does not intend to condone or overlook even minor infractions. Those statements were with reference to an announced plan for a peaceful demonstration on Sunday, July 28, 1963.

Throughout the week, both newspapers ran photographs of the preparations of the police for the demonstration including, for example, in the July 27, 1963 issue of the Danville Register, a trailer truck, back doors open with title "B-I-G P-A-D-D-Y", and "Room for All" and caption stating:

> "A city employee inspects interior of tractor trailer that will be used to haul prisoners to booking headquarters in city auditorium if D-Day demonstration Sunday results in law violations requiring mass arrests. Court Injunction against demonstrators prohibits violation of any law."

In the July 25, 1963 edition of the Danville Bee, a five column photographic spread entitled "Police prepared to cope with any eventuality on Demonstrator D-Day Sunday" showed various jail facilities for "prisoner overflow" photographic equipment and emergency State Police Headquarters; and,

9. On July 26, 1963 in Corporation Court, the trials of the two hundred thirty-four (234) persons charged with violating the Injunction were continued until July 31, 1963.

On Union Street at the headquarters of the Danville Christian Progressive Association, police were parked across the street photographing persons entering and leaving the building. The Danville Christian Progressive Association put cloth coverings on the windows.

The defense attorneys filed a Writ of Habeas Corpus with the Virginia Supreme Court of Appeals for those defendants in jail for violation of the June 6 Injunction; and,

10. That on July 27, 1963, the Danville Register quoted Police Chief McCain as saying, among others:

> "The State Police contingent here was being beefed up sharply yesterday afternoon and last night. Local police have cancelled all days off and an extra shift will be on duty and ready to move at the first sign of trouble."; and,

11. That on Sunday, July 28, 1963 at about 3:00 P. M., approximately eighty (80) persons departed from High Street Baptist Church and walked single file, eight to ten (8-10) feet apart, on sidewalks toward the City Hall. When they reached Main and Union Streets, Police Chief McCain spoke over a loud speaker and said, "Just keep marching and march on to jail you are all under arrest." Seventy-seven (77) were arrested and loaded into a tractor trailer and carryalls and taken to jail. They were arrested for parading without a permit; and,

12. On July 29, 1963 the hearing on whether the Injunction of June 6 be dissolved, continued, or made permanent, commenced in Corporation Court.

The seventy-seven (77) arrested were arraigned in Municipal Court. Hearings were set for August 2, 1963.

13. On July 30, 1963, the hearings of seventy (70) demonstrators for violating the City Picketing Ordinance were held. All were fined twenty dollars ($20.00) and Court costs.

Bonds were posted for eighty-six (86) demonstrators in jail three (3) weeks or more. The Danville Bee on this date, estimated total bond monies for demonstrators approached the $325,000 mark.

The hearing on whether to extend the Corporation Court Injunction of June 6 completed its second day;

14. On July 31, 1963, the hearing on extending the Injunction entered its third day hearing testimony adduced by the City that CORE and the SCEF had been investigated by the House Un-American Activities Committee, and also heard testimony by the City that the demonstrators had been hypnotized. The Court issued a bench warrant for Avon Rollins for his failure to appear in Court in response to a subpoena and an order for his examination by a doctor sent by the City. See affidavit of Ruth L. Harvey for the complete details.

Corporation Court set August 5 as the date for trial of forty-seven (47) demonstrators arrested for violation of the Injunction and set August 8 as the date for trial of the remainder of the two hundred seventy-five (275) cases. The two hundred seventy-five (275) defendants appeared in Court as scheduled, a role was called and they were told to report back on the trial dates; and,

15. On August 2, 1963, after both sides had rested and made final arguments on the continuance of the Injunction of June 6, attorneys for the City, with the permission of the Court, subpoenaed L. W. Chase, President of the Danville Christian Progressive Association, who had some 20 outstanding charges against him, and put him on the witness stand. Counsel for the City frustrated attempts by defense counsel to advise Chase to invoke his privilege not to provide testimony which could be used against him in pending criminal trials.

On Monday, July 29, 1963, at 4:00 A.M., the police went to Chase's home and arrested him because of his children's participation in the demonstration on the afternoon of July 28, 1963. His wife had been arrested at 6:00 P.M. Sunday, July 28.

The Corporation Court handed down a permanent Injunction which included verbatim all the provisions of the June 6 Injunctionand SUIA SPONTE, served additional provisions. The city attorney had not requested any broadening of the Temporary Injunction.

In Municipal Court, the trial of the sixty-seven (67) demonstrators arrested on July 28, 1963 was heard. The Court, refusing to grant separate trials, found the defendants had acted in concert to violate the City Parade Ordinance. See affidavit of Andrew C. Muse for details; and,

16. On August 5, 1963, the first forty-seven (47) of the contempt of the June 6 Injunction cases were set for hearing. Counsel for defendants and all defendants as ordered by the Court appeared.

A few minutes after 10:00 a.m., without notice, Eugene Link, Commonwealth Attorney, filed a Motion for Change of Venue of the forty-seven (47) cases. The grounds asserted were (1) clogged docket of the Danville Corporation Court, and (2) protection of

the right of the accused persons to a speedy trial.

No proof was offered. Defense counsel objected.

At approximately 10:35 a.m. the Court granted the Motion. Defense Counsel excepted.

Judge Aiken, after some other defense motions were presented, denied and excepted to, ordered all forty-seven (47) persons to return at 2:30 p.m. "tomorrow" to be told when and where their case would be tried; that Hanover County would be used.

Defense motion to excuse the forty-seven (47) defendants from appearing tomorrow allowing Counsel to represent them because of hardships imposed by the repeated Court appearances was denied; and,

17. <u>At 2:30 p.m. August 6, 1963</u>, all forty-seven (47) defendants appeared with Counsel. The Clerk read an order, upon direction of the Court, transferring various of the forty-seven (47) cases to Courts in widespread counties in Virginia.

Defense entered further objection such as (1) there had been no proof that trials would be speedier elsewhere, (2) the right to a speedy trial was a right of the accused and these accused had expressly waived that right in a Motion filed with the Court five (5) days earlier to stay all proceedings until all of the charges--multiple charges arising out of a single act--had matured and could be consolidated - Motion #14-A.

The defense motions were denied. Exceptions was taken.

Also present before the Court were pauper Motions for the appointing of a court report filed by the forty-seven (47) defendants. In spite of obvious hardship, the following assignments were made:

Fourteen cases transferred to Hanover County (167 miles from Danville) for trial on September 16, 1963.

Six cases were transferred to Chesterfield County (138 miles away); trial on September 16, 1963.

Six cases went to Cumberland County (40 miles away); trial September 23, 1963.

Six cases were transferred to Hopewell (144 miles away); trial set October 8, 1963.

Seven cases to Princess Anne County (235 miles away); trial set for October 7, 1963.

Six cases were retained for immediate trials in Danville.

The Judges Aiken and Bazille said the Order granting change of Venue of the forty-seven (47) cases to widespread corners of the State could be rescinded...if defendants would waive their rights to individual trials.

There was no waiver.

Defense Counsel pleaded to not begin the six (6) Danville trials until Thursday because of the subpoena and other problems of the 3:00 o'clock notice.

Motion denied and excepted.

Defense motions - have Court reporter appointed for pauper defendants were denied amidst an accusation by Eugene Link, Commonwealth Attorney, that defense attorneys involved agreed to represent the accused persons before they were arrested.

The special Grand Jury was convening tomorrow, August 7, 1963. The Court reporter present at this hearing was to read her untranscribed notes to the Grand Jury which has already indicted fourteen (14) persons.

Judge Aiken, meanwhile refused to disqualify himself in these contempt cases in spite of defense motions. Two Courts were to proceed to try six contempt cases in Danville.

The Temporary Injunction has been announced by City Officials

to apply to every person in Danville who might express public dissatisfaction of racial segregation.

It is interpreted to enjoin any and all from violating the laws of Virginia: every misdemeanor is a violation of the Injunction.

BUT, TO THE BEST OF OUR KNOWLEDGE AND BELIEF, HUNDREDS OF NON-DEMONSTRATORS HAVE COMMITTED MISDEMEANORS WHICH HAVE INJURED BUSINESSES, CREATED NUISANCES BY BEING DRUNK, DISORDERLY, ETCETERA.

YET, NO PERSON HAS BEEN CHARGED WITH VIOLATION OF THE INJUNCTION IN ADDITION TO THE COMMISSION OF A MISDEMEANOR . . . EXCEPT A NEGRO (OR WHITE PERSON IDENTIFIED WITH THE NEGRO MOVEMENT) ALLEGED TO BE DEMONSTRATING AGAINST RACISM.

/s/ L. W. HOLT
L. W. Holt

/s/ J. L. WILLIAMS
J. L. Williams

(b)
STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

This day appeared before me Delores J. Page, a Notary in and for the City of Danville in the State of Virginia, Betty Dixon, and stated under oath before me as follows:

1. That during the past month, she has been working in the office of the Danville Christian Progressive Association at 226 North Union Street, Danville, Virginia, and in such capacity, has been answering the telephone, and doing general clerical duties; and,

2. That most of her time, during the daylight hours, is

spent in this office. The Danville police have been daily parking and staying near the office. They take pictures of people going in and out of the office. They take license numbers of the people who park near or go near the office, and are constantly urging people to move on. They tell them to stay away from the office, and they allow no one to stand or talk around the office; and,

3. That, for example, on July 30, at 11:30 a.m., twelve (12) policemen came to the Movement office. They boldly walked in giving no reason for their presence, showing no warrants or Court orders. They arrested a white girl working in the office and gave no answer to the often put question, "What is the arrest for?" At this time, they took pictures of the office and the persons present. When asked, they produced no search warrants. They dropped flash bulbs on the floor and refused to pick them up when requested; and,

4. On another occasion, July 20, 1963, some eight or nine (8 or 9) police cars converged on the office on foot. Those in cars parked them and got out. They then stood around the entrance to the office for a long period of time and then went away; and,

5. Every day policemen stationed themselves in a furniture store in front of the Movement office to observe activities going on in said office with binoculars; and,

6. When Daniel Foss from Massachusetts was in jail, his car was left with the affiant. During the days he was in jail, she used the car and was followed by policemen on several occasions, and, usually, she was stopped and questioned. Many people, generally, from these tactics of the policemen, are afraid to join or be identified with the Movement, and have expressed

this fear to me. I, too, experience fear because of the police conduct.

/s/ Betty Dixon
Affiant

(c)
STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

This day personally appeared before me, Delores J. Page, a Notary Public in and for the City of Danville in the State of Virginia, Hildreth McGhee, who stated under oath as follows:

1. That he is an ordained minister and is the pastor of a church in Roxboro, North Carolina. That he has been a resident of the City of Danville all of his life; and,

2. That he has been working in the office of the Danville Christian Progressive Association, the Movement office, and has been there every day since July 16. That the police are always parked close to the office, that the police are using binoculars from a furniture store across the street from the Movement office to look into the office. This action has caused the Danville Christian Progressive Association to buy curtains and keep the door locked for privacy. That the policemen are taking pictures of the people coming to and from the office and have not allowed people to stand in or near the said office; and,

3. That the police are always in attendance at the mass meetings that have been in various sections of the City. These police actions have made people afraid to be identified with the Movement though they have expressed sympathy for same. A number of persons have told the affiant that they are afraid to have their

pictures taken and are afraid to ride around town with him since he is connected with the Movement; and,

4. Since the issuance of the permanent Injunction entered by the Danville Corporation Court on August 2, many people have told him that they are afraid to even give money to the cause as they are afraid they will be in violation of the Injunction and will be arrested. People have told him they are afraid to attend the meetings, even though these meetings are only singing and prayer sessions; and,

5. The police know the station wagon that he drives, and constantly followed him and stopped him to see his permit. On at least two (2) occasions, these same officers who stopped him knew about his permit because they had stopped him before; and,

6. The Danville Christian Progressive Association has sent packages and supplies to the Demonstrators while they were in jail, but the packages and supplies never reached the people for whom they were sent; and,

7. That he was told by one Bonnie Breakley that the said Bonnie Breakley had been fired for paying his poll taxes. He had a job in a downtown white barber shop. The white barber told him that he did not pay taxes, and he did not pay poll taxes, and he would fire any employee who paid such. These actions of the police have continued up unto the present.

/s/ Hildreth McGhee
Affiant

(d)
STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

This day personally appeared before me, a Notary Public in

and for the State and City aforesaid, RUTH L. HARVEY, who after being first duly sworn, deposes and says; that she is one of the Attorneys for Avon William Rollins, a member of the Student Non-Violent Co-ordinating Committee.

Deponent states that Mr. Rollins has been arrested on a felony indictment for inciting the colored population to acts of war against the white population and is presently under a $5,000.00 bond pending trial; that he has been arrested for violation of the City of Danville anti-picketing ordinance; he has been arrested and charged with violation of the temporary injunction issued by the Corporation Court of the City of Danville on June 6, 1963, placed under additional bond.

Deponent further states that in a proceeding held Wednesday, July 31, 1963, through August 2, 1963, for the purpose of determining whether the temporary injunction of June 6, 1963 should be made a permanent injunction, Mr. Rollins was subpoenaed by the Commonwealth to appear on Wednesday, July 31, 1963 at 10:00 A.M. to give testimony in the Commonwealth's case.

Deponent states that Mr. Rollins appeared on the appointed date and time, but was not called to testify before the luncheon recess. However, during the luncheon recess, Mr. Rollins became unconscious and was seen by Dr. Jerry Luck of Danville, Virginia on an emergency basis. Mr. Rollins was admitted to Winslow Hospital at 3:45 p.m., July 31, 1963 where he remained hospitalized until Monday, August 5, 1963. The Court was notified through Counsel, of Mr. Rollins' illness. At this point the City Attorney asked that the Doctor who attended Mr. Rollins be subpoenaed and brought to Court. This was done and Dr. Luck testified that he had examined this man around 2:00 p.m. on July 31, 1963, and when he saw Mr. Rollins, he was unconscious. Dr. Luck stated that he

gave Mr. Rollins a sedative. Mr. Rollins had another attack soon after Dr. Luck left him, and on this occasion Dr. H. W. Harvey was called to Winslow Hospital to treat him. The Police had been sent for Mr. Rollins, and found that he was in the hospital and the City asked for an Order to have a Doctor designated by the City, examine Mr. Rollins, which Order was forthwith given.

Pursuant to this Order, Dr. McNeely examined Mr. Rollins on the evening of Wednesday, July 31, 1963 about 5:00 P.M. and again the morning of Thursday, August 1, 1963. Dr. McNeely testified that on these examinations, which he performed in concert with Dr. Harvey, Mr. Rollins' personal Physician, they found that Mr. Rollins had an elevated spinal fluid pressure and blood in the spinal fluid. Examination of the skull revealed that two depressed areas suggestive of holes made for exploratory surgery of the brain at very early age. Both Doctors testified that they were of the opinion that Mr. Rollins was suffering from a malady of the brain, but that since such diagnostic tools such as electro encephalogram were not available in the City of Danville, they were unable to make a definite diagnosis although they suspected a form of epilepsy. Both Doctors agreed that Mr. Rollins should go as soon as possible, to a community where the proper diagnostic tools were available for further examination and treatment. Dr. McNeely testified that he returned to Winslow Hospital on Friday, August 2, 1963, to again examine Mr. Rollins. He said he returned on this 3rd occasion solely because he had developed an interest in Mr. Rollins' medical condition. Dr. McNeely specifically disavowed any claim that his request to examine him pursuant to the Court Order for July 31, 1963, on this third occasion, was based on said Order, and that he did not tell Mr. Rollins that he was there to examine him pursuant to the Court's

Order, since he was not there pursuant to the Court's Order, but went there on his own without authorization. On Friday, August 2, 1963, both Dr. Harvey and Dr. McNeely were called to testify with regard to Mr. Rollins' ability to appear in Court. It was Dr. McNeely's position that Mr. Rollins might be able to appear in Court if he was brought in on a stretcher. At the close of the Commonwealth's evidence, Mr. Ferguson, Attorney for the Commonwealth, announced that he did not wish to take the responsibility for Mr. Rollins' health, which was involved in producing him as a witness under such circumstances. Mr. John W. Carter, who is assisting the Commonwealth Attorney stated that for personal reasons he wanted Mr. Rollins to appear in Court. Following this, the Court summarily issued a rule to show cause why Mr. Rollins should not be found in contempt of Court for failing to submit to the third medical examination. The rule to show cause was set for hearing at 10:00 A.M., Tuesday, August 6, 1963. Doctors Harvey and McNeely appeared and testified at that hearing in the manner set forth above.

Finally, deponent states that Judge Brazille, with Judge Aiken in Court advising him, found that Rollins had submitted to two examinations and that Dr. McNeely did not purport to examine Mr. Rollins for the Court on Friday, August 2, 1963. Judge Brazille interpreted the Order for examination as a continuing order and stated that therefore any refusal by Mr. Rollins at any time to submit to a Medical examination by Dr. McNeely was contemptuous of the Court. Judge Brazille found Mr. Rollins guilty of contempt of court and fined him $100.00 and sentenced him to 10 days in Jail. Judge Aiken, who was present in Court, at the request of Judge Brazille, set bond on appeal at $500.00.

/s/ Ruth L. Harvey
Affiant

(e)
AFFIDAVIT REGARDING ONE INCIDENT OF "HURRY-UP TRIALS" WHICH DENIED NEGROES AND SEVERAL WHITE PERSONS ARRESTED WITH THEM ON JULY 28, 1963 OF THE NORMAL PROTECTION AFFORDED BY THE MUNICIPAL COURT OF DANVILLE, VIRGINIA

This day ANDREW C. MUSE appeared before me, a Notary Public in and for the City of Danville, State of Virginia and stated under oath the following:

1. That I am counsel for many of the defendants charged with the alleged commission of offenses in the anti-segregation demonstrations which have occurred in Danville.

2. That I served as counsel in the trial of sixty-seven (67) adult defendants, along with Attorneys J. L. Williams and Harry I. Wood, when they were tried in the Municipal Court of the City of Danville, Virginia on August 2, 1963. The charge was alleged violation of the Danville City Ordinance 16-20, as amended, which is commonly known as the "Parade Permit Ordinance." (A copy of the Ordinance is Appended to this Affidavit)

3. That all sixty-seven defendants were arrested on 28 July, 1963. In addition to being charged with the violation of the Ordinance each person was also charged with the violation of the Temporary Injunction issued by Judge Aiken on 6 June, 1963 in the Danville Corporation Court.

4. That the multiple charges in these sixty-seven cases--like more than 300 other cases pending in the Danville Courts--grew out of the same single act of the accused at the same time, same place.

5. That when the sixty-seven defendants appeared in the Municipal Court for the alleged violation of the Ordinance, seconds before the commencement of what we thought would be individual trials, the Commonwealth moved and was granted permission to amend all of the warrants, individual warrants, to read "unlawfully and

in concert." We objected to this. The Motion was nevertheless granted. We asked by what authority the amendments took place which made the charges one of conspiracy. We were given no authority. I have personally not been able to find any such authority for such action.

6. After the Amendment the sixty-seven defendants were tried in a group. This manner of trial denied the individual defendants the opportunity to limit the evidence to what they may have done individually. There was group evidence. There was group guilt.

7. I and other counsel for the defendants attempted to raise constitutional objections to the Ordinance as a defense. We were told by the Court that the Constitutional issues had no place in these cases in his Court.

8. All of the defendants were found guilty after five hours. With the exception of one defendant, all were fined $20.00 and costs. We appealed because there had been no evidence introduced of any statements or agreements to act in concert by any of the defendants. We argued that the mere presence of an accused with others was insufficient to support a conspiracy conviction.

9. That all of the sixty-seven defendants found guilty in this mass trial are to appear in the Corporation Court of the City of Danville on 8 August, 1963, at 10:00 A.M. for alleged violation of the Temporary Injunction. Said alleged violation of the Injunction consisting of the alleged violation of the Ordinance.

10. That the sixty-seven defendants subjected to the mass trial, with but one or two exceptions, are persons of extremely limited means who cannot bear the expenses of litigation and the loss of time from employment involved in countless court appearances which is the procedure enforced by the Danville Courts in these matters.

/s/ Andrew C. Muse

(f)
STATE OF VIRGINIA

CITY OF DANVILLE, to-wit:

This day, personally appeared before me, a Notary Public in and for the State and City aforesaid, THOMAS HOLT, who after being first duly sworn, deposes and says: that he is a resident of Pittsylvania County, Virginia and a student at Howard University.

Deponent states that since school closed, he has been here and has been a part of the demonstrations in Danville, Virginia.

Deponent further states that he was in a demonstration on July 11 of this year, and remained in jail twenty (20) days; that he was held at the Danville City Jail for one and half days, and then removed to the Danville City Farm. That he was placed in a tight cell on bread and water for singing; that the guards constantly intimidated him and the rest of the prisoners by taking them to "rock hole" and stating that he would be brought back after they were convicted and made to work in these places; that the guards threatened them with tear gas, with taking away mattress and starvation for singing while on the City Farm.

Deponent states that the guards refused newspapers and periodicals that were sent, that they did not give them any information that was sent from the outside even though various supplies, periodicals and magazines were sent almost daily.

Deponent states that after a few days, he was removed, along with others, to the Halifax County Jail where similar treatment was accorded them in the Jail.

Deponent further states that he was released from jail on July 31, and since that time, Police have come up to him while he was walking on the Street and have taken his pictures on three (3) different occasions.

Deponent states that he has been followed on numerous oc-

MSS SEDFRE
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BLACKWELL, LILLIAN, S. et al. VS. HARRISON, ALBERTIS, S., JR. et al. FAIRFAX VIRGINIA 1963
(CLASS ACTION by NEGROES AGAINST SEGREGATION in THEATRES)

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BLACKWELL, LILLIAN, S. et al. VS. HARRISON, ALBERTIS, S., JR. et al. FAIRFAX VIRGINIA 1963
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State Historical Society of Wisconsin

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RECEIVED
APR - 8 1963
VLADECK & ELIAS

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF VIRGINIA

LILLIAN S. BLACKWELL, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 2873
ALBERTIS S. HARRISON, JR., et al.,	:	
Defendants.	:	

BRIEF ON BEHALF OF PLAINTIFFS

STATEMENT OF THE CASE

Plaintiffs, by this suit, seek to have declared unconstitutional, and to enjoin, permanently and pendente lite, the enforcement of certain statutes of the Commonwealth of Virginia requiring racial segregation in places of public assemblage, to wit: §§ 18.1-356 and 18.1-357, Code of Virginia of 1950, as amended. Plaintiffs allege that the Court has jurisdiction over the subject matter by virtue of the Fourteenth Amendment of the United States Constitution, 42 U.S.C. §§ 1981 and 1983, and 28 U.S.C. §§ 1343(3) and 2201.

The defendants have moved to dismiss the complaint on various grounds, and the plaintiffs have moved for summary judgment. The answers of the defendants contain general denials, but pose no issues of fact. The defendant theatre operators have also moved for summary judgment upon their answer. By order of March 11, 1963, as amended March 19, 1963, the Court has set the date of May 17, '1963 for hearing upon the merits and upon all motions. A three-judge Court has been appointed pursuant to 28 U.S. Code § 2284.

This brief is addressed to the issues as posed by the motions. There is no genuine issue as to the material facts, as shown by the verified complaint and exhibits attached thereto, and the motion for preliminary injunction and affidavits in support

thereof, as well as the various pleadings filed by the defendants. The facts are as follows:

Plaintiffs are members of the Negro race. On November 4, 1962, at about 5 p.m., they presented themselves at the ticket window of the Jefferson Theatre in Fairfax County, Virginia, and asked the ticket seller to sell them tickets so that they could enter the theater and view the motion picture then being exhibited. Plaintiffs' behavior was at all times orderly and peaceful. The theater was then open for business, and other persons purchased admission tickets both before and after plaintiffs made their request. The theater's ticket seller, acting within the scope of her authority, refused to sell tickets to plaintiffs and excluded them from the theater. The plaintiffs appealed to the manager of the theater, who also declined to sell them tickets and to admit them to the theater. These refusals to admit plaintiffs to the theater were solely by reason of plaintiffs' race or color.

On November 4, 1962, at about 6 p.m., plaintiffs presented themselves at the ticket window of the Glebe Theatre in Arlington County, Virginia, and asked the ticket seller to sell them tickets so that they could enter the theater and view the motion picture then being exhibited. Under circumstances that were in all material respects identical to those plaintiffs had encountered at the Jefferson Theatre, plaintiffs were likewise denied permission at the Glebe Theatre to purchase tickets or enter the premises. The refusal to admit plaintiffs to the Glebe Theatre was solely by reason of plaintiffs' race or color.

The Jefferson and Glebe Theatres are leased and operated by the defendants, Jefferson Corporation and the Lee Amusement Corporation, respectively. These corporations are in turn subsidiaries of defendant Neighborhood Theatre, Incorporated (hereinafter called Neighborhood Theatre), which, through

subsidiary corporations, operates numerous motion picture theaters in northern Virginia. Neighborhood Theatre maintains a policy or practice at all theaters under its management in the northern Virginia area of denying admission to members of the Negro race. In response to communications from persons asking that Negroes be admitted without discrimination to theaters in northern Virginia owned (or leased) and managed by it, Neighborhood Theatre, on numerous occasions, through its vice president, Morton G. Thalhimer, Jr., has stated that it is not practical to do so, and that it is necessary to operate the theaters in accordance with the laws of Virginia, citing §§ 18.1-356 and 18.1-357, Code of Virginia.

The Commonwealth's attorneys for Arlington and Fairfax counties, defendants herein, have both indicated recently in response to inquiries addressed to them that they consider §§ 18.1-356 and 18.1-357 to be enforceable provisions of the Code of Virginia, and that in the event violations are properly charged, they will conduct prosecutions to the extent warranted by the evidence. In addition, in recent years, and as late as 1957, in the area of northern Virginia where theaters owned and managed by Neighborhood Theatre are located, there have been police arrests and criminal prosecutions to enforce these statutes. 1/

ARGUMENT

I. THE VIRGINIA SEGREGATED SEATING LAW IS UNCONSTITUTIONAL ON ITS FACE

Virginia Code §§ 18.1-356 and 18.1-357 plainly violate the equal protection clause of the Fourteenth Amendment by classifying persons according to race, a classification which the

1/ E. g., Bissell v. Commonwealth, 199 Va. 367, 100 SE 2d 1; Commonwealth v. Taylor, Crim. No. 2024, Circuit Court of Arlington County, January 13, 1958.

courts have uniformly struck down. The instant case is indistinguishable in principle from those holding invalid state laws requiring segregation on privately-owned intra-state transportation facilities. Gayle v. Browder, 352 U.S. 903, affirming 142 F. Supp. 707 (M.D. Ala.); Bailey v. Patterson, 369 U.S. 31, reversing 199 F. Supp. 595 (S.D. Miss.); Flemming v. South Carolina Electric & Gas Co., 224 F. 2d 752 (C.A. 4), appeal dismissed, 351 U.S. 901; Baldwin v. Morgan, 251 F. 2d 780 (C.A. 5). Unconstitutionality here is even clearer because the Virginia segregated seating laws also deny to all citizens their rights of freedom of assembly and association which are jealously protected under the First and Fourteenth Amendments. Thomas v. Collins, 323 U.S. 516; NAACP v. Alabama, 357 U.S. 449.

It is now well established that a State may not constitutionally discriminate on the basis of race in the use or maintenance of facilities owned and operated by it. Statutes, ordinances and regulations which effect such a result are in violation of the due process and equal protection clauses of the Fourteenth Amendment. Brown v. Board of Education, 347 U.S. 483; Mayor & City Council of Baltimore v. Dawson, 350 U.S. 877, affirming 220 F. 2d 386 (C.A. 4); Holmes v. City of Atlanta, 350 U.S. 879, reversing 223 F. 2d 93 (C.A. 5); New Orleans City Park Improvement Assn. v. Detiege, 358 U.S. 54, affirming 252 F. 2d 122 (C.A. 5). It is also settled that what a State may not do directly, it may not accomplish by indirection. Thus, the protection of the Fourteenth Amendment applies when a State grants a license or lease to a private party to operate a concession or business on publicly-owned property. Discrimination on the basis of race or color is impermissible in the use or maintenance of such facilities. Burton v. Wilmington Parking Authority, 365 U.S. 715; Turner v. City of Memphis, 369 U.S. 350; City of Greensboro v. Simkins,

246 F. 2d 425 (C. A. 4); Jones v. Marva Theatres, Inc., 180 F. Supp. 49 (Md.). Finally, the State may not inject itself into the affairs of a private business, and by statute, ordinance or regulation compel discriminatory practices which the State itself could not lawfully enforce if the enterprise were publicly owned or operated. See Gayle v. Browder, Bailey v. Patterson and other cases cited supra. 2/

II. THE PLAINTIFFS WERE DEPRIVED OF CONSTITUTIONAL RIGHTS "UNDER COLOR OF STATE LAW"

As the pleadings show, the maintenance by defendants Neighborhood Theatre and its subsidiaries of a policy of excluding Negroes from their motion picture theaters in northern Virginia is directly attributable and inextricably related to the existence of §§ 18.1-356 and 18.1-357, Code of Virginia, and the likelihood of enforcement of these provisions by state law enforcement officials. These defendants, in their answer (Para. 14), aver that they will never change this policy so long as "the suggested change would contravene state law." In the affidavits attached to their answer they acknowledge that in following their discriminatory policy vis-a-vis Negroes, they have been "acting within the scope of Sections 18.1-356 and 18.1-357," and they further assert that they will not consider changing this policy "when such changes would cause [them] to operate in violation of the laws of the State of Virginia."

2/ Plaintiffs assume that none of the defendants will attempt to justify the segregated seating law as a valid exercise of the State's police power under the doctrine of Plessy v. Ferguson, 163 U.S. 537. It is clear that that case is no longer a correct statement of the law. See Dawson v. Mayor & City Council of Baltimore, 220 F. 2d 386 (C.A. 4), affirmed 350 U.S. 877, where the Court of Appeals said that the authority of the Plessy case "was swept away by the subsequent decisions of the Supreme Court. *** With this in mind, it is obvious that rac ial segregation in recreational activities can no longer be sustained as a proper exercise of the police power of the State *** ." 220 F. 2d at 386-387.

These defendants thus affirm the position consistently expressed by Morton G. Thalhimer, Jr., vice president of Neighborhood Theatre. Mr. Thalhimer stated on numerous occasions that it is not practical to admit Negroes to theaters owned (or leased) and managed by his company, explaining that, "it is necessary for us to operate our theaters in accordance with the laws of the State of Virginia." So that there may be no misunderstanding to what laws Mr. Thalhimer referred, he has regularly enclosed with such letters copies of the segregated seating statutes.

There are two ways for Neighborhood Theatre to operate theaters in conformity with the statutes: to admit both races and segregate, or admit one race only. Neighborhood Theatre elected to exclude Negroes. Since the requests to change the policy undoubtedly varied in language, and Neighborhood Theatre made identical responses, it obviously meant that it was not practical either to admit and segregate or to admit without segregation. Either way, the law is regarded by Neighborhood Theatre as an obstacle to the admission of plaintiffs and others similarly situated -- in the one case, because the law would require special arrangements which are impractical, in the other, because the law forbids.

In view of the admission of the theater managements that their discriminatory racial policy is maintained in conformity with the segregation statutes and that the policy will <u>never</u> be changed to contravene these statutes, it is obviously baseless for any defendant herein to assert that the policy is the result of a private business decision by the theater managements, made without reference to the statutory provisions. If an action is required by law, it cannot be a purely private decision -- the decision is to do what the law requires and the law cannot be imagined away. Such an assertion is like saying that a motorist stops at a stop sign because

an exercise of judgment independent of the sign tells him to. What Neighborhood Theatre would have done in the absence of the law is a hypothetical question; the actual question which was resolved by Neighborhood Theatre inextricably involved the law.

The resolutions adopted by the theater managements on March 5, 1963, after this litigation commenced, are immaterial to any issue in this cause so far as they purport to state what Neighborhood Theatre will do if the law is declared invalid. That is not only a hypothetical question -- it is a future hypothetical question. These resolutions bind no one and at most indicate that if the segregation laws are declared invalid, the theaters will continue their discriminatory policy with respect to Negroes unless the best interests of the companies are considered to dictate otherwise, a situation not in issue in this suit. The injunction sought by the plaintiffs would merely permit the theaters to decide their racial policies without constraint of state law.

In the face of the undisputed facts discussed above, there is plainly no merit to the contention suggested by several of the defendants to the effect that the exclusion of plaintiffs from the theaters to which they sought admission was not effected under color of state law and hence was not violative of their constitutional rights. A similar contention was considered in detail by the Fifth Circuit in Baldwin v. Morgan, supra, 251 F. 2d 780, 788-790, where it had been argued that a private railroad terminal company that maintained and required the use by Negroes of segregated waiting room facilities, could not be held liable under 42 U.S.C. § 1983, because such action was not under color of state law. The Court, after noting that the terminal company was enforcing segregation practices in its waiting rooms in compliance with laws and regulations of the State of Alabama and the

City of Birmingham, held that under those circumstances the terminal company, even though it was a "private non-state party," could be held liable in an action commenced under the Civil Rights statutes (28 U.S.C. § 1343(3), and 42 U.S.C. § 1983). The Court stated, "[T]hose who directly assist the admitted state agency in carrying out the unlawful action become a part of it and subject to the sanction of Section 1983." 251 F. 2d at 788. As a second basis for ascribing state action to the terminal company the Fifth Circuit found that the State had in effect delegated to the company the obligation of enforcing its state policy. The Court emphasized, "When given police powers, individual citizens become state agents without question," citing Gayle v. Browder, supra, 142 F. Supp. 707 (M.D. Ala.), affirmed 352 U.S. 903; Flemming v. South Carolina Electric & Gas Co., supra, 224 F. 2d at 753 (C. A. 4). [3/]

The foregoing discussion and authorities, we submit, establish beyond doubt the inappositeness of Harrison v. Murphy, 205 F. Supp. 449 (Del.), relied upon by defendant Neighborhood Theatre and its subsidiaries. That case involved an attempt to predicate a civil rights action on a Delaware innkeepers' statute which permits an innkeeper to refuse service "to persons whose reception or entertainment by him would be offensive to the major part of his customers, and would injure his business." 205 F. Supp. at 450, n. 2. In dismissing the complaint, the District Court held that the broad, permissive language of the state statute did not suffice for the purpose of bringing an innkeeper's refusal to serve a Negro, within the

3/ See Nixon v. Condon, 286 U.S. 73, 88: "The pith of the matter is simply this, that when [private groups] * * * are invested with an authority independent of the will of the association in whose name they undertake to speak, they become to that extent the organs of the State itself, the repositories of official power." See also Smith v. Allright, 321 U.S. 649, 658, 663.

definition of action taken "under color of state law." The Court specifically distinguished the permissive innkeepers' statute involved in that case from a statute such as is here in issue, which compels private parties to enforce the State's policy of racial discrimination. To emphasize the difference between the two types of statutes, the District Court quoted from the opinion of the Court of Appeals for this Circuit in Williams v. Howard Johnson's Restaurant, 268 F. 2d 845, 847, where stress was placed on "the important distinction between activities that are required by the state and those which are carried out by voluntary choice and without compulson, by the people of the state in accordance with their own desires and social practices." 268 F. 2d at 847.

III. THE COURT SHOULD EXERCISE ITS JURISDICTION PROMPTLY AND NOT AWAIT FURTHER ADJUDICATION BY THE COURTS OF VIRGINIA

Defendants Harrison and Button in their motion to dismiss assert that the Court should not exercise its jurisdiction and thereby interfere with the enforcement of §§ 18. 1-356 and 18. 1-357 by state officials. The defendants, apparently thus intending to rely on the so-called abstention doctrine, assert in effect that the federal constitutional question posed by this case should be left for litigation in the state courts.

The doctrine of abstention is a judge-made rule stemming from Railroad Commission of Texas v. Pullman Co., 312 U.S. 496, which represented the exercise of traditional equity powers to weigh the interests favoring prompt determination by a federal court having jurisdiction, against the desirability that the state law be first interpreted and applied by the state court having the final right to interpret

it. Thus, either or both of two unseemly results could be averted: a federal interpretation differing from the authoritative state interpretation, or an adjudication of unconstitutionality that might be averted by the state court construction.

The essence of the doctrine, however, is that there must be something for the state courts to construe. This was recognized in the Pullman case and in every subsequent Supreme Court decision applying the doctrine. The essentiality of this element to the doctrine was recognized in the recent case of Harrison v. N.A.A.C.P., 360 U.S. 167. There the Court noted the 'lengthy, detailed, and sweeping" (360 U.S. at 170) state laws drawn into question by that case. In ruling that they should first be construed by the Virginia courts, the Court stated (360 U.S. 176):

> * * *[N]o principle has found more consistent or clear expression than that the federal courts should not adjudicate the constitutionality of state enactments fairly open to interpretation until the state courts have been afforded a reasonable opportunity to pass upon them* * *.
>
> The present case, in our view, is one which calls for the application of this principle, since we are unable to agree that the terms of these three statutes leave no reasonable room for a construction by the Virginia courts which might avoid in whole or in part the necessity for federal constitutional adjudication, or at least materially change the nature of the problem. [Emphasis added.]

Here, in contrast to Harrison v. N.A.A.C.P., there is no reasonable room for a construction of these statutes which could avoid the necessity for federal constitutional adjudication. As the cases cited under Point I of the Argument, supra, indicate, the segregation statutes at issue in this case are incapable of a valid construction, nor can there be any doubt that they apply to the theaters of the defendant theater operators and to the plaintiffs. Under these circumstances, as the Supreme Court recently made emphatically clear, "no occasion is presented for abstention." Turner v. City of Memphis, supra, 369 U.S. 350, reversing 199 F. Supp. 585 (W.D. Tenn.); Bailey v.

Patterson, 369 U.S. 31, reversing 199 F. Supp. 595 (S.D. Miss.). The controlling principle was well stated by Judge Rives of the Court of Appeals for the Fifth Circuit, the dissenting member of the three-judge district court that was reversed in Bailey v. Patterson, who stated (199 F. Supp. at 615):

> No authority whatsoever may be found for the proposition, that, where a state statute is clearly and unavoidably unconstitutional on its face, comity requires that state courts be allowed the privilege of so declaring. Such a rule would be, not abstention, but abdication of [the] judicial function.

See also Browder v. Gayle, supra, 142 F. Supp. at 713 (D. C. Ala.), affirmed 352 U.S. 903; Morrison v. Davis, 252 F. 2d 102, 103 (C. A. 5), certiorari denied, 356 U.S. 968, rehearing denied, 357 U.S. 944.

In view of the foregoing, plaintiffs submit that Reid v. City of Norfolk, Virginia, 179 F. Supp. 768 (E.D. Va.), to the extent that it is inconsistent, does not represent a correct statement of the current status of the law. In that case, the Court, relying on the abstention doctrine, refused to enjoin the enforcement of Virginia's segregated seating statutes in an auditorium owned and operated by the City of Norfolk. In reaching its conclusion, the Court observed that the Supreme Court, as of that time, had been "confronted with an opportunity to expressly overrule the line of cases restricting the power of federal courts from enjoining state officers in enforcing state criminal statutes where civil rights are involved," but had failed to take such action. 179 F. Supp. at 772. This statement obviously is no longer true in view of the decisions in Turner v. City of Memphis and Bailey v. Patterson. Accordingly, the result reached in Reid v. City of Norfolk cannot provide the basis for disposition of the case at bar.

IV. THE GOVERNOR AND ATTORNEY GENERAL OF VIRGINIA ARE PROPERLY NAMED AS DEFENDANTS TO THIS SUIT

Defendants Harrison and Button, in their motion to dismiss, and again in their answer, suggest that they are not properly named

as defendants to this suit. In support of their assertion these defendants, in substance, deny responsibility for "the operation, enforcement or execution" of the laws in question. (Def. motion to dismiss, p. 1; Def. answer, p. 2). Plaintiffs show below the lack of merit to this argument.

With respect to defendant Harrison, the defense is not well taken in view of the plain mandate of § 73 of the Constitution of Virginia which, in enumerating the duties and powers of the Governor, states that he "shall take care that the laws be faithfully executed." 9 Code of Virginia, 1950, p. 73. It has long been settled that

> * * * [W]here state officials, purporting to act under state authority invade rights secured by the Federal Constitution, they are subject to the process of the federal courts in order that the persons injured may have appropriate relief * * *. The Governor of the State in this respect, is in no different position from that of other state officials.

Sterling v. Constantin, 287 U.S. 378, 393, and cases cited. Accordingly, in a suit to enjoin operation of a state statute on the ground of its alleged invalidity under the Fourteenth Amendment, it is proper to name the Governor, in his official capacity, as a party defendant. And this is so, even if the Governor has not directly enforced or threatened to enforce the statute in question. Bevins v. Prindale, 39 F. Supp. 708, 709-710 (E.D. Ill.), affirmed 314 U.S. 573; Arneson v. Denny, 25 F. 2d 993, 995 (W.D. Wash.).

As the Bevins and Arneson cases indicate, what is true for the Governor as defendant in a case such as this, is equally true for the Attorney General. In Virginia this principle was settled in James v. Almond, 170 F. Supp. 331 (E.D. Va.), a case involving the constitutionality of certain state school laws. This Court, in holding that the Attorney General as the chief law enforcement officer of the Commonwealth, was properly named as defendant, stated (170 F. Supp. at 341):

> While he is given no specific statutory duties under the statutes in controversy, he is nevertheless charged with enforcement of the laws of Virginia.

In James v. Almond it is thus apparent that the Court had no difficulty in finding that the Attorney General was properly named as a defendant in a case such as this, despite the lack of specification of his duties relative to the statutes there in question. Plaintiffs submit that the Governor, who similarly has no specific duties under the statutes challenged here, is nevertheless properly named as a defendant on the basis of his constitutional duty to see that the laws are "faithfully executed."

V. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION WITHOUT DELAY

The law is clear in this Circuit that in circumstances such as those presented here, a plaintiff need not show that irreparable injury will be suffered unless a preliminary injunction is granted. As the Court of Appeals stated in Henry v. Greenville Airport Commission, 284 F. 2d 631, 633:

> The District Court has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right.

But assuming arguendo that such a showing must be made, plaintiffs rely on the uncontroverted allegations of their motion for preliminary injunction and the accompanying affidavits. Thus, it is undisputed that there are no motion picture theaters patronized by the general public that admit Negroes in the densely populated area of northern Virginia that is generally regarded as part of the Washington metropolitan area, and there is only one so-called Negro theater there. Further, the defendant Neighborhood Theatre owns (or leases) and operates most of the indoor theaters and about half of all the motion picture theaters in the densely populated area of northern Virginia. Plaintiffs submit that they have shown in this case that

they are being irretrievably deprived of fundamental constitutional rights, with resulting continuing public humiliation and inconvenience, that they are thereby being irreparably injured, and that they are entitled to a preliminary injunction.[4/]

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Court should enter its order granting plaintiffs' motion for summary judgment and the motion for a preliminary injunction, and that the various motions to dismiss and for summary judgment filed by the defendants should be denied.

/s/ Noel Hemmendinger

Noel Hemmendinger

/s/ Allison W. Brown, Jr.

Allison W. Brown, Jr.

/s/ Otto L. Tucker

Otto L. Tucker

Attorneys for Plaintiffs

April 5, 1963

4/ In view of the uncontested facts herein, judicial authority supports the propriety of the Court's granting relief on plaintiffs' motion for summary judgment. See Louisiana State Board of Education v. Allen, 287 F. 2d 32 (C. A. 5); New Orleans City Park Improvement Assn. v. Detiege, 252 F. 2d 122 (C. A. 5), affirmed 358 U. S. 54.

CERTIFICATE OF SERVICE

The foregoing brief was served by mailing true copies thereof to Robert D. McIlwaine, III, Esq., Assistant Attorney General of Virginia, Attorney General's Office, Supreme Court-State Library Building, Richmond 19, Virginia, counsel for Albertis S. Harrison, Jr., and Robert Y. Button; William J. Hassan, Esq., Commonwealth's Attorney for Arlington County, Virginia, and Peter J. Kostik, Esq., Assistant Commonwealth's Attorney for Arlington County, Virginia, counsel for William J. Hassan and Major William G. Fawver; Thomas O. Lawson, Esq., Assistant Commonwealth's Attorney for Fairfax County, Virginia, Fairfax, Virginia, counsel for Ralph G. Louk and Major William L. Durrer; and Robert T. Barton, Jr., Esq., and Alexander Wellford, Esq., Mutual Building, Richmond 19, Virginia, counsel for Neighborhood Theatre, Inc., Jefferson Corporation of Virginia, and Lee Amusement Corporation, this 5th day of April 1963.

/s/ Otto L. Tucker

Otto L. Tucker

BROTHERHOOD OF R.R. TRAINMEN V. VIRGINIA - CASE
1963 - 1964

Society of Wisconsin

Please Retain Original Order

No. 34.--October Term, 1963.

BROTHERHOOD OF RAILROAD TRAINMEN, Petitioner, v. VIRGINIA EX REL. VIRGINIA STATE BAR.	On Writ of Certiorari to the Supreme Court of Appeals of Virginia.

[April 20, 1964.]

MR. JUSTICE BLACK delivered the opinion of the Court.

The Virginia State Bar brought this suit in the Chancery Court of the City of Richmond, Virginia, against the Brotherhood of Railroad Trainmen, an investigator employed by the Brotherhood, and an attorney designated its "Regional Counsel," to enjoin them from carrying on activities which, the Bar charged, constituted the solicitation of legal business and the unauthorized practice of law in Virginia.[1] It was conceded that in order to assist the prosecution of claims by injured railroad workers or by the families of workers killed on the job the Brotherhood maintains in Virginia and throughout the country a Department of Legal Counsel which recommends to Brotherhood members and their families the names of lawyers whom the Brotherhood believes to be honest and competent. Finding that the Brotherhood's plan resulted in the "channeling of all, or substantially all," the workers' claims to lawyers chosen by the Department of Legal Counsel, the court issued an injunction against the Brotherhood's carrying out its plan in Virginia. The Supreme Court of Appeals of Virginia affirmed summarily over objections that the injunction abridges the Brotherhood's rights under the First and Fourteenth Amendments, which guarantee freedom of speech, petition and assembly. We granted certiorari to consider

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1/ The investigator and the Regional Counsel were not served with process and are not parties.

this constitutional question in the light of our recent decision in N.A.A.C.P. v. Button, 371 U.S. 415.[2] 372 U.S. 905.

The Brotherhood's plan is not a new one. Its roots go back to 1883, when the Brotherhood was founded as a fraternal and mutual benefit society to promote the welfare of the trainmen and "to protect their families by the exercise of benevolence, very needful in a calling so hazardous as ours..../"[3] Railroad work at that time was indeed dangerous. In 1888 the odds against a railroad brakeman dying a natural death were almost four to one;[4] the average life expectancy of a switchman in 1893 was seven years.[5] It was quite natural, therefore, that railroad workers combined their strength and efforts in the Brotherhood in order to provide insurance and financial assistance to sick and injured members and to seek safer working conditions. The Trainmen and other railroad Brotherhoods were the moving forces that brought about the passage of the Safety Appliance Act[6] in 1893 to make railroad work less dangerous; they also supported passage of the Federal Employers Liability Act[7] of 1908 to provide for recovery of damages for injured railroad workers and their families by doing away with harsh and technical

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2/ We do not find it necessary to consider the Brotherhood's additional argument that the decree violates the Brotherhood's right to represent workers which is guaranteed by the Railway Labor Act, 44 Stat. 577, as amended, 45 U.S.C. §§ 151-188.

3/ Constitution of the Brotherhood of Railroad Trainmen and Brotherhood of Railroad Trainmen Insurance Department, Preamble.

4/ Interstate Commerce Commission, Third Annual Report (1889), 85.

5/ Griffith, "The Vindication of a National Public Policy Under The Federal Employers' Liability Act," 18 Law and Contemp. Prob. 160, 63.

6/ 27 Stat. 531, as amended, 45 U.S.C. §§ 1-43.

7/ 35 Stat. 65, as amended, 45 U.S.C. §§ 51-60. An earlier version of the law passed two years earlier, 34 Stat. 232, had been held unconstitutional. Employers' Liability Cases, 207 U.S. 463. The constitutionality of the 1908 statute was sustained in the Second Employers' Liability Cases, 223 U.S. 1.

common-law rules which sometimes made recovery difficult or even impossible. It soon became apparent to the railroad workers, however, that simply having these federal statutes on the books was not enough to assure that the workers would receive the full benefit of the compensatory damages Congress intended they should have. Injured workers or their families often fell prey on the one hand to persuasive claims adjusters eager to gain a quick and cheap settlement for their railroad employers, or on the other to lawyers either not competent to try these lawsuits against the able and experienced railroad counsel or too willing to settle a case for a quick dollar.

It was to protect against these obvious hazards to the injured man or his widow that the workers through their Brotherhood set up their Legal Aid Department, since renamed Department of Legal Counsel, the basic activities of which the court below has enjoined. Under their plan the United States was divided into sixteen regions and the Brotherhood selected, on the advice of local lawyers and federal and state judges, a lawyer or firm in each region with a reputation for honesty and skill in representing plaintiffs in railroad personal injury litigation. When a worker was injured or killed, the secretary of his local lodge would go to him or to his widow or children and recommend that the claim not be settled without first seeing a lawyer, and that in the Brotherhood's judgment the best lawyer to consult was the counsel selected by it for that area.[8/]

There is a dispute between the parties as to the exact meaning of the decree rendered below, but the Brotherhood in this Court objects specifically to the provisions which enjoin it

> "...from holding out lawyers selected by it as the only approved lawyers to aid the members or their families;...or in any other manner soliciting or encouraging such legal employment of the selected lawyers;...and from doing any act or combination

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8/ The Brotherhood also provides a staff, now at its own expense, to investigate accidents to help gather evidence for use by the injured worker or his family should a trial be necessary to vindicate their rights.

> of acts, and from formulating and putting into practice any plan, pattern or design, the result of which is to channel legal employment to any particular lawyer or group of lawyers...."9/

The Brotherhood admits that it advises injured members and their dependents to obtain legal advice before making settlement of their claims and that it recommends particular attorneys to handle such claims. The result of the plan, the Brotherhood admits, is to channel legal employment to the particular lawyers approved by the Brotherhood as legally and morally competent to handle injury claims for members and their families. It is the injunction against this particular practice which the Brotherhood, on behalf of its members, contends denies them rights guaranteed by the First and Fourteenth Amendments. We agree with this contention.

It cannot be seriously doubted that the First Amendment's guarantees of free speech, petition and assembly give railroad workers the right to gather together for the lawful purpose of helping and advising one another in asserting the rights Congress gave them in the Safety Appliance Act and the Federal Employers Liability Act, statutory rights which would be vain and futile if the workers could not talk together freely as to the best course to follow. The right of members to consult with each other in a fraternal organization necessarily includes the right to select a spokesman from their number who could be expected to give the wisest counsel. That is the role played by the members who carry out the legal aid program. And the right of the workers personally or through a special department of their Brotherhood to advise

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9/ Certain other provisions of the decree enjoined the Brotherhood from sharing counsel fees with lawyers whom it recommended and from countenancing the sharing of fees by its regional investigators. The Brotherhood denies that it has engaged in such practices since 1959, in compliance with a decree of the Supreme Court of Illinois. See In re Brotherhood of Railroad Trainmen, 13 Ill.2d 391, 150 N.E.2d 163. Since the Brotherhood is not objecting to the other provisions of the decree except insofar as they might later be construed as barring the Brotherhood from helping injured workers or their families by recommending that they not settle without a lawyer and by recommending certain lawyers selected by the Brotherhood, it is only to that extent that we pass upon the validity of the other provisions. Because of our disposition of the case, we do not consider the Brotherhood's claim that the findings of the court were not supported by substantial evidence.

concerning the need for legal assistance--and, most importantly, what lawyer a member could confidently rely on--is an inseparable part of this constitutionally guaranteed right to assist and advise each other.

Virginia undoubtedly has broad powers to regulate the practice of law within its borders;[10] but we have had occasion in the past to recognize that in regulating the practice of law a State cannot ignore the rights of individuals secured by the Constitution.[11] For as we said in N.A.A.C.P. v. Button, supra, 371 U.S., at 429, "a State cannot foreclose the exercise of constitutional rights by mere labels." Here what Virginia has sought to halt is not a commercialization of the legal profession which might threaten the moral and ethical fabric of the administration of justice. It is not "ambulance chasing." The railroad workers, by recommending competent lawyers to each other, obviously are not themselves engaging in the practice of law, nor are they or the lawyers whom they select parties to any soliciting of business. It is interesting to note that in Great Britain unions do not simply recommend lawyers to members in need of advice; they retain counsel, paid by the union, to represent members in personal lawsuits,[12] a practice similar to that which we upheld in N.A.A.C.P. v. Button, supra.

A State could not, by invoking the power to regulate the professional conduct of attorneys, infringe in any way the right of individuals and the public to be fairly represented in lawsuits

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10/ The Bar relies on the common law, the Canons of Ethics of the American Bar Association, adopted into the rules of the Supreme Court of Appeals of Virginia, 171 Va. xviii, and several Virginia statutes prohibiting the unauthorized practice of law. The Canons of Ethics to which the Bar refers prohibit respectively stirring up of litigation, control or exploitation by a lay agency of professional services of a lawyer, and aiding the unauthorized practice of law. Canons 28, 35, 47. The statutes respectively set the qualifications for the practice of law in the State and provide for injunctions against "running, capping, soliciting and maintenance." Virginia Code, 1950, §§ 54-42, 54-83.1.

11/ N.A.A.C.P. v. Button, 371 U.S. 415; Konigsberg v. State Bar, 353 U.S. 252; Schware v. Board of Bar Examiners, 353 U.S. 232.

12/ See Feather, The Essence of Trade Unionism (London, 1963), 42-43.

authorized by Congress to effectuate a basic public interest. Laymen cannot be expected to know how to protect their rights when dealing with practiced and carefully counseled adversaries, cf. Gideon v. Wainwright, 372 U.S. 335, and for them to associate together to help one another to preserve and enforce rights granted them under federal laws, cannot be condemned as a threat to legal ethics.[13] The State can no more keep these workers from using their cooperative plan to advise one another than it could use more direct means to bar them from resorting to the courts to vindicate their legal rights. The right to petition the courts cannot be so handicapped.

Only last Term we had occasion to consider an earlier attempt by Virginia to enjoin the National Association for the Advancement of Colored People from advising prospective litigants to seek the assistance of particular attorneys. In fact, in that case, unlike this one, the attorneys were actually employed by the association which recommended them, and recommendations were made even to non-members. N.A.A.C.P. v. Button, supra. We held that "although the the petitioner has amply shown that its activities fall within the First Amendment's protections, the State has failed to advance any substantial regulatory interest, in the form of substantive evils flowing from petitioner's activities, which can justify the broad prohibitions which it has imposed." 371 U.S., at 444.[14] In the present case the State again has failed to show any appreciable public interest in preventing the Brotherhood from carrying out its plan to recommend the lawyers it selects to represent injured workers. The Brotherhood's activities fall just as clearly within

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13/ Cf. Drinker, Legal Ethics (1953), 167; Hildebrand v. State Bar, 36 Cal.2d 504, 515, 225 P.2d 508, 514 (Carter, J., dissenting), 36 Cal.2d, at 521, 225 P.2d, at 518 (Traynor, J., dissenting).

14/ See also Gibson v. Florida Legislative Investigation Comm., 372 U.S. 539; Louisiana ex rel. Gremillion v. N.A.A.C.P., 366 U.S. 293; Shelton v. Tucker, 364 U.S. 479; Bates v. City of Little Rock, 361 U.S. 516; N.A.A.C.P. v. Alabama ex rel. Patterson, 357 U.S. 449; Schneider v. State, 308 U.S. 147.

the protection of the First Amendment. And the Constitution protects the associational rights of the members of the union precisely as it does those of the NAACP.

We hold that the First and Fourteenth Amendments protect the right of the members through their Brotherhood to maintain and carry out their plan for advising workers who are injured to obtain legal advice and for recommending specific lawyers. Since the part of the decree to which the Brotherhood objects infringes those rights, it cannot stand; and to the extent any other part of the decree forbids these activities, it too must fall. And, of course, lawyers accepting employment under his constitutionally protected plan have a like protection which the State cannot abridge.

The judgment and decree are vacated and the case is remanded for proceedings not inconsistent with this opinion.

It is so ordered.

Mr. Justice Stewart took no part in the decision of this case.

MR. JUSTICE CLARK, whom MR. JUSTICE HARLAN joins, dissenting.

By its decision today the Court overthrows state regulation of the legal profession and relegates the practice of law to the level of a commercial enterprise. The Court permits a labor union--contrary to state law--to engage in the unauthorized practice of soliciting personal injury cases from among its membership on behalf of 16 regional attorneys whom its president has placed on the union's approved list. Local officials of the union call on each member suffering an injury and seek to secure employment of these approved attorneys in the prosecution of claims for damages arising therefrom. Moreover, the union, through its president not only controls the appointment and dismissal of the approved attorney but also has considerable influence over his fees and often controls the disposition of cases. Furthermore, from 1930 to at least 1959, the union had required these approved attorneys to pay to it a portion of their fees, usually 25%. Such an arrangement

may even now be in effect through the ruse of reimbursement for investigatory services rendered by the union. This state of affairs degrades the profession, proselytes the approved attorneys to certain required attitudes and contravenes both the accepted ethics of the profession and the statutory and judicial rules of acceptable conduct.

The Court excuses the practice on the policy ground that the union membership needs a corps of attorneys experienced in personal injury litigation because ordinary "lawyers [are] either not competent to try these lawsuits against the able and experienced railroad counsel or too willing to settle a case for a quick dollar." To me this is a serious indictment of the profession. In the cases that I have passed on here--numbering about 177 during the past 15 years--I dare say that counsel for the railroad employee has exhibited advocacy not inferior to that of his opponent (although I do not remember that any one of the 16 approved attorneys appeared in these cases). Indeed, the railroad employee has prevailed in practically all of the cases and the recoveries have ranged as high as $625,000. See Gallick v. Baltimore & Ohio R. Co., 372 U.S. 108 (1963); Transcript of Record, p. 7. Under these facts the Court's rationale will not stand up, even as a policy ground for approving this patent violation of the cardinal ethics of our profession and flagrant disobedience to the law of most of our States.

The Court depends upon NAACP v. Button, 371 U.S. 415 (1963), to support its position. But there the vital fact was that the claimed privilege was a "form of political expression" to secure, through court action, constitutionally protected civil rights.[1/] Personal injury litigation is not a form of political expression, but rather a procedure for the settlement of damage claims. No

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1/ "In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment by all government, federal, state and local, for the members of the Negro community in this country. It is thus a form of policical expression." NAACP v. Button, supra, at 429.

guaranteed civil right is involved. Here, the question involves solely the regulation of the profession, a power long recognized as belonging peculiarly to the State. Button, as well as its ancestry cited by the majority in the footnotes, is not apposite.

Finally, no substantive evil would result from the activity permitted in Button. But here the past history of the union indicates the contrary. Its Legal Aid Department (now the Department of Legal Counsel) was set up in 1930 for the admitted purposes of advising members "relative to their rights respecting claims for damages" and assisting them "in negotiating settlements...." The Department had a complete reporting service on all major injuries or deaths suffered by its members, regional investigators to whom such reports were referred, and the 16 approved regional counsel (many of whom remain the same today) to whom the cases were channeled for prosecution and who split their fees with the union. And, what is of even more significance, the trial court in this case found "that the defendant Brotherhood still adheres to the pattern and design of the plan formulated and implemented in 1930."

The union admits that it did operate in this manner until 1959 but says that it has now reformed its operation. But the record shows that this identical union plan has been before several other courts[2/] and, while the union has repeatedly promised to reform, as here, it has consistently renewed the same practices. But even if the union has sincerely reformed, which I doubt, the plan it now proposes to follow is subject to the same deficiencies. It includes: the approval of 16 regional attorneys by the president of the union, who also has power to discharge them at his pleasure; the solicitation of all injured members by the local officials of the Brotherhood who urge the employment of an approved counsel;

2/ E.g., In re Petition of Committee on Rule 28 of the Cleveland Bar Assoc., 15 Ohio L. Abs. 106 (1933); In re Brotherhood of Railroad Trainmen, 13 Ill.2d 391 (1958); In re O'Neill, 5 F. Supp. 465 (E.D. N.Y. 1933); Young v. Gulf M. & O. R. Co., No. 3957 (E.D. Mo. 1946); Reynolds v. Gulf M. O. & Texas Pac R. Co., No. 772 (E.D. Tenn. 1946); North Carolina ex rel. McLean v. Hice, Superior Ct. of N.C., County of Buncombe (1948).

the furnishing of the name of the approved counsel to the injured brother as the only attorney approved by the Brotherhood; the furnishing of the names and addresses of injured members to the approved attorneys; the furnishing of investigative services to the approved attorney, the cost of which, it is indicated, comes from the fees received by the latter; and, finally, the "tooting" of the approved attorneys in union literature and meetings.

I do not read the decree approved by the State as prohibiting union members from recommending an attorney to their brothers in the union. Virginia has sought only to halt the gross abuses of channeling and soliciting litigation, as have been going on here for 30 years. The potential for evil in the union's system is enormous and, in my view, will bring disrepute to the legal profession. The system must also work to the disadvantage of the Brotherhood members by directing their claims into the hands of the 16 approved attorneys who are subject to the control of one man, the president of the union. Finally, it will encourage further departures from the high standards set by canons of ethics as well as by state regulatory procedures and will be a green light to other groups who for years have attempted to engage in similar practices. E.g., Chicago Bar Assn. v. Chicago Motor Club, 362 Ill. 50; Rhode Island Bar Assn. v. Automobile Service Assn., 55 R.I. 122; cf. Sember v. Oregon State Board of Dental Examiners, 294 U.S. 608 (1935); Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483 (1955).

BEECHER E. STALLARD, Richmond, Va., and JOHN J. NAUGHTON, Chicago, Ill. (EDWARD B. HENSLEE and ARNOLD ELKIND, with them on the brief) for petitioner; AUBREY R. BOWLES, JR., Richmond, Va. (AUBREY R. BOWLES, III, and BOWLES, BOYD and HEROD, with him on the brief) for respondent; WAYLAND B. CEDARQUIST, JONATHAN F. ELLS, JAMES T. JENNINGS, HOLCOMBE H. PERRY, WARREN H. RESH, R. CARLETON SHARRETTS, JR., EARL SNEED and MELVIN F. ADLER filed brief for The American Bar Association, as amicus curiae, seeking affirmance.

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CAMERON, JOHN, EARL et al. VS. JOHNSON, PAUL et al MISSISSIPPI 1965

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IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

HATTIESBURG DIVISION

REVEREND JOHN EARL CAMERON, et al	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1891
	)	
HONORABLE PAUL JOHNSON, et al	)	
	)	
Defendants.	)	

MEMORANDUM FOR PLAINTIFFS

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Statement

On June 7th, 1965 the Supreme Court in a per curiam opinion, No. 587 Misc., October Term, 1964, vacated the judgment of this Court entered on July 11, 1964 dismissing the complaint herein. The Court remanded the cause for "reconsideration in light of Dombrowski v. Pfister, 380 U.S. 479.

The per curiam opinion directs this Court to consider on the remand two questions:

1. "Whether 28 U.S.C. 2283 (1958 e.d.) bars a federal injunction in this case"; and

2. "If 2283 is not a bar... whether relief is proper in light of the criteria set forth in Dombrowski."

On Friday, October 15, 1965 this Court conducted a hearing on the order of remand. Both the plaintiffs and defendants introduced live testimony as "supplemental", R. 13, to the original record.*/ The cause was then argued orally

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*/In the original proceeding before the three-judge court, no live testimony was adduced. The record consisted solely of affidavits.

before the Court, and counsel were directed to prepare memoranda for the Court's consideration.

In this memorandum we will not attempt to restate or reargue questions fully presented to the Court in the original proceeding. We will address ourselves solely to the problems raised by the order of remand, and will attempt to analyze the record evidence adduced at the remand hearing in light of the questions posed by the per curiam opinion.

In this connection, with the indulgence of the Court, we will address ourselves in the memorandum initially to the second question placed by the per curiam opinion, whether relief is proper in light of the criteria set forth in Dombrowski, and then turn to a consideration of the first question raised, whether 2288 would bar a federal injunction in this case. We feel that this order of discussion will be more helpful to the Court. A full development of the substance of the case in light of the recent opinion in Dombrowski may be of some assistance in then considering the impact of 2283 upon the relief here sought.

Prior Proceedings

For the convenience of the Court, we briefly summarize here the prior proceedings in this cause.

On April 13, 1964 the plaintiffs brought this action under Title 42 U.S.C. 1971, 1983 and 1985, seeking a declaratory judgment and injunctive relief restraining the enforcement of Mississippi House Bill 546.*/ This Bill was approved by the Governor on April 8, 1964 and enforced by multiple arrests in Hattiesburg, Mississippi on April 10th. The complaint alleged inter alia that the statute was "an unconstitutionally broad regulation of speech, and that it was being applied for the purpose of discouraging [plaintiffs] civil rights activities". See per curiam opinion of June 7th.

A three-judge district court was duly convened by the Chief Judge of the Circuit consisting of Circuit Judge Rives, District Judge Cox and the late District Judge Mize. A hearing was held on April 29, 1964 on an application for an interlocutory injunction, restraining the pending state

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*/ The text of the Bill as amended on July 9, 1964 is set forth in Appendix A hereto. The Bill was entitled, "An Act to prohibit the unlawful picketing of state buildings, court houses, public streets and sidewalks".

criminal trials, but decision on that application was not required because of an agreement by the Attorney General of the State to consent to the postponement of the state trials until at least July 15th, 1964.

An amended complaint in the nature of a class action was then filed. After the service of an answer by the defendants, a hearing was held and the cause submitted for final decree upon affidavits filed by both plaintiffs and defendants. No live testimony was taken.

On July 11, 1964 the majority of the District Court, Judges Mize and Cox, filed an opinion, findings of fact and conclusions of law, dismissing the amended complaint on the doctrine of abstention and lack of federal equity jurisdiction. Circuit Judge Rives filed a separate opinion in which he would have found the statute "clearly unconstitutional" and would have enjoined its enforcement.

Shortly thereafter, all the state court criminal proceedings brought under the statute were removed to the federal district court pursuant to the Civil Rights Removal Statute, Title 28 U.S.C. 1443. These proceedings are still pending in the federal system. The precise status of these criminal proceedings are set forth in Appendix B hereto.

On August 7, 1964 plaintiffs filed a Notice of Appeal to the Supreme Court. On October 20, 1964 a jurisdictional statement was served and filed. On June 7th, 1965

the Supreme Court handed down a per curiam opinion vacating the judgment of dismissal and remanding the cause to this Court for reconsideration in light of Dombrowski v. Pfister.

On October 15th, 1965 the three-judge District Court reconvened, Circuit Judge Coleman replacing the late Judge Mize. A full hearing was conducted at which live testimony was adduced by both plaintiffs and defendants and counsel were directed to file memoranda with the Court. This memorandum is filed for the plaintiffs in accordance with this direction.

POINT I

EQUITABLE RELIEF IS PROPER IN LIGHT OF THE CRITERIA SET FORTH IN DOMBROWSKI v. PFISTER.

1. The Dombrowski criteria.

In Dombrowski the Supreme Court took jurisdiction "to settle important questions concerning federal injunctions against state criminal prosecutions threatening constitutionally protected expression". 380 U.S. 479, 483. In reversing the dismissal of the complaint by a three-judge statutory court in the Eastern District of Louisiana, Circuit Judge Wisdom dissenting, 227 F. Supp. 556, 564, and in directing the issuance of federal injunctive relief against the enforcement of certain provisions of a Louisiana state criminal statute, the Supreme Court established criteria which now govern the appropriateness of the exercise of federal equity power where state criminal statutes and proceedings intrude upon the area of constitutionally protected expression.

Mr. Justice Brennan's opinion for the Court carefully analyzes two related questions involved in determining the propriety of federal relief: One, the allegations neces-

sary to invoke federal equity jurisdiction, and two, the relevance of the doctrine of abstention from decision prior to adjudication by the highest state courts. In isolating the "criteria set forth" in Dombrowski it will be helpful to discuss these two questions, as the Court does, separately.

Dombrowski sets forth two separate and distinct categories of circumstances in which the exercise of federal equity power to restrain state criminal proceedings is appropriate. The first branch of the Dombrowski analysis relates to situations in which state statutes are challenged on their face "as overly broad and vague regulations of expression." 380 U.S. at 490. Where prosecutions under such a statute are actually threatened, this challenge "if not clearly frivolous", the Court holds, "will establish the threat of irreparable injury required by the traditional doctrines of equity". 380 U.S. at 490. This is because of the "'danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application' NAACP v. Button at p.433" 380 U.S. at 487. Such a statute with an overbroad sweep in this sensitive area has a "chilling effect upon the exercise of First Amendment rights", a "chilling effect", which Mr. Justice Brennan points out "may derive from the fact of prosecution, unaffected by the prospects of its success or failure". Under the first branch of the Dombrowski analysis

the criteria controlling the exercise of federal equity power are thus two-fold: (1) a facial challenge, "not clearly frivolous" to the overbreadth and vagueness of a state criminal statute in the area of free expression, and (2) "actually threatened" prosecutions under the statute. */

The second category of circumstances under which federal equitable relief is appropriate is where the state criminal statutes sought to be enforced may be otherwise valid but are being "applied for the purpose of discouraging protected activities". 380 U.S. at 490. This second branch of the Dombrowski analysis comes into play where the gravamen of the complaint is that the state "has invoked and threatens

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*/ That this is all that is required to be shown to justify equitable relief where the challenge is to the face of the statute on the grounds of vagueness and overbreadth is evident in light of the actual results in Dombrowski. The district court had refused to permit the taking of any evidence whatsoever in the original hearings and dismissed the complaint for failure to state a cause of action. Despite the absence of any factual record on the allegations of the complaint, the Supreme Court ordered the issuance of permanent injunctive relief without further hearings below, against the enforcement of those provisions of the state statute which it found as a matter of law were void on their face as overbroad and vague in the area of free expression, and under which the state had concededly initiated prosecutions. Thus, it is clear that as to this branch of Dombrowski, where the attack is to facial constitutionality the only two criteria required to be met to justify permanent equitable relief are (1) overbreadth and vagueness, and (2) actual threatened prosecutions.

to continue to invoke criminal process without any hope of ultimate success, but only to discourage appellants' civil rights activities" 380 U.S. at490.*/ Where these threats to enforce state criminal statutes are "not made with any expectation of securing valid convictions, but rather are part of a plan to employ arrests ... and threats of prosecution under color of the statutes to harass ... and discourage" persons from "asserting and attempting to vindicate ... constitutional rights", such threatened prosecutions have a "chilling effect upon the exercise of First Amendment rights" and justify the intervention of a federal court of equity. The criteria for the invoking of federal equity power under the second branch of Dombrowski thus involve a showing (1) that the state is using criminal statutes, possibly otherwise valid, without real expectation of ultimate success and (2) that these prosecutions are for the purpose of

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*/ Such allegations the Court holds state a claim under under the Civil Rights Act, 42 U.S.C. 1983, 380 U.S. at 490.

discouraging protected constitutional activities.*/

Having delineated the criteria to be utilized in considering the propriety of federal equitable relief in both of these two categories the Court went on to dispose of the abstention doctrine as "inappropriate" in either of the

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*/ A fully developed discussion of this second branch of the Dombrowski analysis is contained in the recent decision of the Fifth Circuit in Cox v. Louisiana, #22657, June 29, 1965, on motion for a stay pending appeal (opinion by Wisdom, C.J.). In this case Judge Wisdom analyzed the state criminal proceeding there involved as follows:

> "The second prosecution is without any hope of success. The district attorney's transparent purpose is to harass and punish the petitioner for his leadership in the civil rights movement, and to deter him and others from exercising rights of free speech and assembly in Louisiana -- in this instance, by advocating integration of public accommodations".

On these allegations Judge Wisdom concluded:

> "A civil complaint asserting such an abuse of the prosecutorial function would state a claim under the Civil Rights Act, 42 U.S.C. 1983, and justify injunctive relief, Dombrowski v. Pfister, 1965, 380 U.S. 479."

The Court went on to explain why the general reluctance to interfere with local state criminal proceedings must give way here to the assertion of federal power:

> "When a State, under the pretext of preserving law and order uses local laws, valid on their face, to harass and punish citizens for the exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception: the federal system is imperiled."

two branches of the Dombrowski analysis. Where state criminal statutes are challenged as "overly broad and vague regulations of expression", abstention as a rule of federal adjudication plays no role. As Mr. Justice Brennan points out, in such cases "abstention is at war with the purposes of the vagueness doctrine." And similarly where state criminal statutes even if otherwise valid are applied "for the purpose of discouraging protected activities" abstention is equally "inappropriate." For as the Justice again explains, "the interpretation ultimately put on the statutes by the state courts is irrelevant." The principle which emerges from Dombrowski is clear: Where the criteria for the invoking of federal equitable power are met a federal court has the duty to adjudicate the issues involved. It may not abstain from this responsibility under the Constitution. As Judge Wisdom recently wrote for the Court of Appeals in Cox v. Louisiana, C.A. 5, #22657, June 29, 1965, in such cases "there is no federal invasion of states' rights. Instead, there is rightful federal interposition under the Supremacy Clause of the Constitution to protect the individual citizen against state invasion of federal rights."

The hearing before this Court pursuant to the remand mandate of the Supreme Court reinforced the conclusion that the criteria established by that Court in Dombrowski for the invocation of federal equitable relief, which we

have briefly summarized here, require the issuance of the injunctive decree sought in this proceeding. We proceed to analyze the remand hearing in light of the criteria set forth in Dombrowski.

2. Mississippi House Bill No. 546 is overly broad and and vague in the area of free expression.

The only opinion in the District Court passing upon the facial constitutionality of House Bill 546 is the dissenting opinion of Circuit Judge Rives. The majority judges specifically decline to pass upon the constitutionality of the Bill, resting their dismissal of the action upon a want of equity jurisdiction and an invocation of the doctrine of abstention.*/ The majority of the Supreme Court vacated this dismissal and the issue of facial constitutionality is once again before the District Court.

It would serve no purpose to repeat here the arguments set forth in the dissenting opinion which led Judge Rives to conclude that "it is difficult to conceive of a

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*/ Although the opinion of Judge Mize touched upon the question of constitutionality, the Conclusions of Law are very specific in declining to adjudicate this question: "There is no need or necessity for this Court to pass upon the constitutionality of House Bill 546, Mississippi Laws 1964, and this Court, therefore, declines to do so," Conclusions of Law, July 10, 1964.

statute drawn in broader or more vague and sweeping terms than that here under attack." The analysis underling this conclusion is fully developed in the dissenting opinion and does not require repetition. We would suggest, however, that the evidence adduced at the remand hearing confirms and reinforces in a striking and rather extraordinary fashion the constitutional conclusions reached by Judge Rives in the original dissenting opinion. Judge Rives warned that the "broad, sweeping and inexact terms" of this statute would "necessarily encroach on freedom of speech and press" and that in the words of the Supreme Court, there is a "danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application." The dangers which Judge Rives warned of are now self-evident after the hearing on the remand which has so graphically established factually "the setting in which the statute operates" NAACP v. Button, 371 U.S. 415.

(a) The evidence developed at the hearing establishes that the vagueness and and overbreadth of the statute permits selective enforcement in violation of the First and Fourteenth Amendments.

In NAACP v. Button, 371 U.S. 415, the Court warned that "a vague and broad statute lends itself to selective enforcement against unpopular causes". In Button, this was only a prophecy and yet the statute there involved fell.

In Cox v. Louisiana, 379 U.S. 536, the prophecy became a reality this last term when the Court refused to enforce a Louisiana "obstructing public passages" statute similar in most respects to the Mississippi law here involved in the light of record concessions before the Court that the Louisiana Statute had been "selectively enforced." In view of identical record concessions and testimony adduced at the recent remand hearing, the decision of the Court this year in Cox has now become wholly dispositive of this proceeding settling authoritatively the question of the constitutionality of Mississippi House Bill 546.

In Cox, the Court was concerned with the impact of three Louisiana statutes. One of these was the state "obstructing public passages" statute, a provision very similar to the Mississippi statute here under examination. The Louisiana statute provided as follows in its relevant sections:

"Obstructing Public Passages

"No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, watercraft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

The appellant challenged his conviction under this statute as an "unconstitutional infringement upon freedom of

speech and assembly" 379 U.S. at 554. The facts in the record showed a clear "obstruction" of a public sidewalk by a civil rights march across the street from the city courthouse,379 U.S. at 553. Mr. Justice Goldberg, in the opinion for the Court did not find it necessary to reach the troublesome and yet unresolved question of the "constitutionality of the uniform, consistent, and nondiscriminatory application of a statute forbidding all access to streets and other public facilities for parades and meetings." 379 U.S. at 555.*/ For in Cox, the record before the Court revealed a practice of "selective enforcement" of the statute rendering it violative of the First Amendment. 379 U.S. at 558. Mr. Justice Goldberg pointed out for the Court that "although the statute here involved on its face precludes all street assemblies and parades, it has not been so applied and enforced by the Baton Rouge authorities." 379 U.S. at 556.

The "selective enforcement" which rendered the statute violative of the First Amendment was evidenced in the record below by "city officials who testified for the

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*/ The Court has left this question completely open in Cox. See Footnote 13, 779 U S. at 555. Cf. Kovacs v. Cooper, 336 U.S. 77, 98 (opinion of Mr. Justice Jackson with Hague v. CIO, 307 U.S. 496, 515 (opinion of Mr. Justice Roberts).

State... that certain meetings and parades are permitted in Baton Rouge, even though they have the effect of obstructing traffic, provided prior appraisal is obtained". This record testimony was "confirmed in oral argument before this Court by counsel for the State" 379 U S. at 556. The statement of counsel for Louisiana which became central to the opinion of the Court was "that parades and meetings are permitted, based on 'arrangement... made with officials'" 379 U.S. at 556. Furthermore, as Justice Goldberg pointed out, "the statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit". 379 U.S. at 556. Justice Goldberg summed up this record evidence in this fashion: "From all the evidence before us it appears that the authorities in Baton Rouge permit or prohibit parades or street meetings in their completely uncontrolled discretion." 379 U S. at 557.

Based upon this concession and record evidence of selective enforcement in the application of the statute, the Court held that the use of the statute was "an unwarranted abridgement of appellant's freedom of speech and assembly secured to him by the First Amendment, as applied to the States by the Fourteenth Amendment"379 U.S. at 558. This conclusion rested upon the analysis of the Court that "the situation is thus the same as if the statute itself expressly provided that there could

only be peaceful parades or demonstrations in the unbridled discretion of local officials". Justice Goldberg went on to point out that "the pervasive restraint on freedom of discussion by the practice of the authorities is not any less effective than a statute expressly permitting such selective enforcement". 379 U.S. at 557. Accordingly, the Court held that under the authority of "a long line of cases in this Court, [*/] it is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not or to engage in invidious discrimination among persons or groups either by use of a statute providing a system of broad discretionary licensing power or, as in this case, the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute". 379 U.S. at 558. This holding commanded a large majority of the Court, the Chief Justice, Mr. Justice Brennan, Mr. Justice Douglas, and Mr. Justice Stewart joined in the majority opinion of Mr. Justice Goldberg. Mr. Justice

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*/ Schneider v. State, 308 U.S. 147; Lovell v. Griffin, 303 U.S. 444; Hague v. CIO, supra; Largent v. Texas, 318 U.S. 418; Saia v. New York, 334 U.S. 558; Niemotko v. Maryland, 340 U.S. 268; Kunz v. New York, 340 U.S. 290.

Black and Mr. Justice Clark concurred in separate opinions strongly condemning the selective enforcement of the statute.*/

The record evidence of "selective enforcement" of the Mississippi "obstruction" statute in Cameron v. Johnson developed at the recent remand hearing is identical to the record evidence of "selective enforcement" of the Louisiana statute in Cox v. Louisiana.

As in Cox, "officials here in Cameron have "testified for that state" that "certain meetings and parades are permitted in" Hattiesburg, "even though they have the effect of obstructing traffic, provided prior approval is obtained". Cf. 379 U.S. at 556. And precisely as in Cox, this was confirmed by counsel for the state, both in examination and oral argument.

The testimony is uncontradicted and indeed it is conceded by the state that a number of parades and marches which have"obstructed" public streets and have "obstructed" traffic have in fact been permitted to take place in Hattiesburg subsequent to the enactment of the Mississippi

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*/ Mr. Justice Black finds that the evidence of selective enforcement tenders the Louisiana statute "unconstitutional under the First and Fourteenth Amendments," as well as "an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment" 379 U.S. at 581. Mr. Justice Clark would limit the holding to the "equal protection ground." 379 U.S. at 591.

statute, and its enforcement against Negro voter registration activities. R. 175,176,177,178,254,255,256,306,307,309,310, 311. These parades and marches held by civic groups and schools, R. 254, 255, such as homecoming demonstrations for Mississippi Southern, R. 255, 306, as in Cox, concededly obstructed traffic in the public streets and blocked off access to public buildings. R. 175, 254, 255, 307. Both Mr. Wells, as counsel for the state, and Mr. Dukes, the County Prosecuting Attorney for Forrest County, conceded on the record that these parades permitted by the city blocked public streets. See, for example, examination of Mr. Dukes, R. 307, 310.

The State did not argue as of course they could not argue, that the parades and marches which occurred did not obstruct the streets or block traffic. Their position in open court was precisely the same as that taken by the Louisiana authorities in Cox. Their position was that these parades were permitted based upon arrangements made with the city officials. Cf. 379 U.S. at 556. Thus, Mr. Welles, counsel for the State in this proceeding, addressed the following question to Reverend Cameron, a witness for the plaintiffs, who had just testified that several school parades had been recently held in Hattiesburg which blocked off the streets and obstructed traffic. R. 175.

"BY MR. WELLS:

"Reverend Cameron, these parades you are talking about are parades where people had made arrangements with the City to participate and have just what's a normal parade like you have a parade for the fair and Christmas and things like that, wasn't it? */ R. 176.

Again, on cross-examination of another plaintiff's witness, Mr. John H. Gould, the following exchange occurred between Mr. Wells, counsel for the State, and the witness:

"Cross Examination.

"BY MR. WELLS:

"Q. Gould, do you know that those parades, the type of parades you are talking about for school and so forth, prearrangements are made with the City and parade permit is gotten for a parade at a certain specific time?

A. I do not know.

Q. That's true, isn't it?

A. I don't know." R. 256.

Again, on cross-examination by counsel for the plaintiffs, Mr. Dukes, County Prosecuting Attorney, made the following direct statements:

"Q. Now, Mr. Dukes, have there been any parades in Forrest County particularly in Hattiesburg since the arrests of May 18th?

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"A. Yes, sir, parades schools (sic) which included white and colored bands, school children, cheer leaders, floats and so forth.

Q. Do these parades ever block the streets?

A. Well, I am sure they did but I didn't ever hear anybody complain about it though.

Q. Did you ever advise Bud Gray [the Sheriff] that they were in violation of this statute?

A. No, sir, because I was informed they had ~~per~~mission of the City, the mayor and commissioners.

Q. Now does this statute contain anything about getting a permit to hold a parade?

A. No sir, sure doesn't." R. 306,307.

Upon this testimony by the County Attorney and upon record concessions by counsel for Mississippi, the conclusion is inescapable that under Cox the selective enforcement of the Mississippi statute renders it violative of the Constitution. Here, as in Cox, it is undisputed that "certain meetings and parades are permitted... even though they have the effect of obstructing traffic, provided prior approval is obtained" 379 U.S. at 556. Here, as in Cox, these parades are permitted based on "arrangements... made with officials". And here, as in Cox, "the statute itself provides no standards for the determination of local officials as to which assemblies to permit or which to prohibit". 379 U.S. at 556.

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What is most striking about the testimony and concessions here is that it underscores vividly the reasoning and conclusions enunciated by the Court in Cox in explaining the constitutional evil in selective enforcement of a statute which touches the areas of free expression. The vice in the selective enforcement of a broad prohibitory statute, the Court points out, is equivalent to the "lodging of such broad discretion in a public official" which "allows him to determine which expression of views will be permitted and which will not." This, then, says the Court "sanctions a device for the suppression of the communication of ideas and permits the official to act as a censor". 379 U.S. at 557. For, as the Court points out, "the pervasive restraint on freedom of discussion by the practice of the authorities under the statute is not any less effective than a statute expressly permitting such selective enforcement". 379 U.S. at 557. But this discretion which the statute appears to vest in the state officials to decide which parades obstructing streets should be banned and which approved, is precisely the justification offered by the State for their selective enforcement of the statute against civil rights demonstrators. Both Mr. Wells and Mr. Dukes seek to explain the selective enforcement in terms of the "type" of parade permitted and the type suppressed. Thus, in the questioning of Reverend Cameron Mr. Wells suggests the

following:

> "Q. Well, they [the parades permitted] weren't demonstrations and picketing type parade, it was just a parade like most cities and towns have from time to time, wasn't it?" R. 176.

Again, in the same cross-examination, Mr. Wells suggests:

> "Q. You don't class that kind of parade in the same category as picketing around a court house, do you?
>
> [objection was overruled]
>
> "Q. You don't put that in the same class with the type of picketing you all were doing, do you?
>
> A. Well, it was not for the same purpose.
>
> Q. That's right." R. 177.

Nothing could be clearer than that the Mississippi authorities have utilized this "extremely broad prohibitory statute", cf. Cox, 379 U.S. at 558, to distinguish between conduct prohibited by the statute and conduct sanctioned by it on the grounds of the "purpose" of the activity. If it is the "type" of parade which is "normal", R. 176, which everyone "likes", R. 176, which no one "complains" about, R. 306, if in short, the city agrees with the "purpose" of the parade, R. 177,it does not matter if it obstructs the public streets. It will be permitted. If,on the other hand, it is a different"type" of parade or demonstration, R. 176, if it

has a different "purpose", R. 177, it will be banned. But this is precisely what the Constitution prohibits. The Mississippi authorities in this proceeding have candidly conceded that in enforcing the statute they wield "a broad discretion" in determining "which expression of views will be permitted and which will not. Cf. Cox, 379 U.S. at 536. If the parade which obstructs the streets has a purpose which meets with general community approval, the statute is not enforced. If the parade has a different purpose, perhaps in sharp opposition to the "politically dominant white community," cf. NAACP v. Button, 371 U.S. 415, then, as in the present situation, the statute will be enforced against the marchers. This the Constitution will not tolerate.

Mississippi seeks to justify this admitted selective enforcement of the statute by pointing out that the Mississippi law, unlike the Louisiana law, makes criminal only "picketing" and "mass demonstrations" which obstruct public streets. The parades which obstructed streets but were permitted were not "mass demonstrations",so the argument goes. But this effort to avoid the impact of Cox merely serves to underscore the total constitutional invalidity of the statute. It is the very breadth and imprecision of the term "mass demonstration" which permits the state to assume that a "demonstration" which expresses majority sentiments

of public opinion, such as a welcome to a football team is not a "mass demonstration", but is a parade. However, a much smaller gathering which expresses minority sentiments perhaps hostile to the majority climate is a "mass demonstration". But the dictionary definition of a "demonstration" is a "public exhibition of welcome, approval, or condemnation, as by a mass meeting or procession". Funk & Wagnall's New College Standard Dictionary. Another definition of "demonstration" is found in the Shorter Oxford English Dictionary, 3rd Edition: "a public manifestation of feeling; often taking the form of procession and mass meeting". Clearly, the dictionary definition of "demonstration" broadly sweeps into its orbit all public "manifestations of feeling" or "exhibitions of welcome, approval or condemnation", which take the form of mass meetings or processions. Mississippi, however, seeks to use this imprecise and broadly coutoured characterization to pick and choose these "manifestations of feeling" it desires to permit and those it desires to prohibit. If the "public manifestation of feeling" reflects the views of the dominant majority, if it expresses safe and comfortable views like expressions of welcome to a football team, or manifestations of school spirit and pride, then it is not a "demonstration" but a parade". If, on the other hand, the "public manifestation of feeling" reflects unpopular views such as opposition to the community favored policy

of Negro disenfranchisement, then it becomes a "demonstration" prohibited by the statute. The very structure of the statute enables the Mississippi authorities "to determine which expression of view will be permitted and which will not". It is constructed deliberately through the use of the terms "mass demonstration" to permit "invidious discrimination among persons or groups", and it has been so enforced. Under the commanding authority of Cox v. Louisiana, "it is clearly unconstitutional". 379 U.S. at 557.

(b) The evidence of selective enforcement of the statute was not before this Court or the Supreme Court in the original proceeding.

The record evidence and the concessions of state officials which demonstrate beyond any question the selective enforcement of the Mississippi statute were not before either this Court or the Supreme Court in the original proceedings. The evidence was developed and the concessions made for the first time in the recent hearing on the remand. Thus, the question of the legal consequences which must flow from such a pattern of selective enforcement comes to this Court as a wholly de novo matter. Neither the majority opinion below of Judge Mize and Judge Cox, the per curiam opinion, nor the two dissenting opinions in the Supreme Court reach this question which now becomes dispositive of the constitution-

ality of the statute.

We would suggest that the dissenting opinion of Mr. Justice Black in Cameron must now be read in the context of his own concurring opinion in Cox relating to the "obstructing-public-passages" statute. We would venture to suggest that on the new record evidence and concessions of selective enforcement Mr. Justice Black's own opinion in Cox would require striking down the statute in Cameron on the new record now made.

Mr. Justice Black has suggested on several occasions that a state may have the constitutional power to "bar all picketing on its streets and highways". See Cox v. Louisiana, 379 U.S. 559, 575; Labor Board v. Fruit & Vegetable Packers, 377 U.S. 58, 76; Cameron v. Johnson, dissenting opinion. The majority of the Court regards this as an open question. Cox v. Louisiana, 379 U.S. at 555. But Mr. Justice Black strongly rejects as unconstitutional under both the First and Fourteenth Amendment a statute purporting to regulate or prohibit picketing or demonstrating which is selectively enforced against certain groups or types of picketing. This is the clear meaning of his concurring opinion in Cox, 379 U.S. at 580. As the Justice so sharply points out, the selective enforcement of the Louisiana statute means that "Louisiana is attempting to pick and choose among the views it is willing to have discussed on

its streets". 379 U.S. at 581. The words of the Justice in his Cox opinion now apply with striking vitality to the new record in Cameron. Here now, as in Cox, Mississippi is "trying to prescribe by law what matters of public interest people whom it allows to assemble on its streets may and may not discuss". 379 U.S. at 581. And here now, as in Cox, the conclusion must be that this is "censorship in a most odious form, unconstitutional under the First and Fourteenth Amendment". 379 U.S. at 581. Furthrmore, as in Cox, "city officials despite this statute have permitted favored groups ... to block the streets with their gatherings". 379 U.S. at 581. This, the Justice concludes, is "an invidious discrimination forbidden by the Equal Protection Clause of the Fourteenth Amendment". 379 U.S. at 581.

In short, the new record evidence and full concessions of selective enforcement of the Mississippi statute brings it squarely into the four corners of Mr. Justice Black's concurring opinion in Cox v. Louisiana. We respectfully disagree with Mr. Justice Black's analysis of the facial vagueness question in his dissenting opinion in Cameron, and note that apparently also a majority of the Court were in disagreement. We will suggest at a later point in this argument that Mr. Justice Black would take another view of the vagueness question in light of the subsequent insertion of the word "unreasonable" in the statute,

a question not before the Court in its first considerations. But surely, no one can disagree that Mr. Justice Black would strike down a statute in the area of free expression which permitted and applied a pattern of selective enforcement. Mr. Justice Black's dissenting opinion in Cameron must, of course, be read in context with his concurring opinion in Cox, written only four months earlier. The new record and concessions of selective enforcement in Cameron now invoke the constitutional conclusions of Justice Black in the Cox concurring opinion.*/

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*/ It should be pointed out that Mr. Justice Stewart, who joined Mr. Justice Black in his Cameron dissent, also joined the majority in Cox in striking down the "obstruction" conviction because of the concessions of selective enforcement. In all, seven members of the Court clearly agree that a conceded pattern of selective enforcement render a statute in the area of free expression violative of the First and Fourteenth Amendments. Mr. Justice White and Mr. Justice Harlan held back from the Cox conclusions concerning selective enforcement seemingly on the ground that the question was not "urged or litigated by the parties either in this Court or the courts below". They suggest that "the parties have had no opportunity to develop or to refute the factual basis underlying the Court's rationale". 379 U.S. at 592, 593. Of course, here the parties have had full opportunity to develop and to refute the factual basis underlying the conclusion of "selective enforcement."

(c) The insertion of the word "unreasonably" in the statute raises questions of unconstitutional vagueness not before the District Court or the Supreme Court in the original proceeding.

Subsequent to the filing of this complaint and the original hearings the Mississippi legislature amended the statute by inserting the word "unreasonably" so that the text now reads, "so as to obstruct or unreasonably interfere". R. 296. The constitutional effect of this amendment was not considered by this Court or the Supreme Court, and in fact the Supreme Court considered the statute only in its original form prior to amendment. See text of statute quoted in full in the dissenting opinion of Mr. Justice Black.*/ This Court has now taken judicial notice of the new wording. R. 399.

We would suggest that the addition of the word "unreasonably" in this prohibitory statute raises new and serious questions of unconstitutional vagueness in the area of free expression beyond those considered by this Court. and the Supreme Court at the first hearings. And we would suggest that this new dimension in the constitutional problem brings the statute into the sweep of Mr. Justice Black's

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*/ The text of the statute quoted by Mr. Justice Black and the basis of his opinion is the original unamended form of the statute which omits the word "unreasonably".

concurring opinion in Cox v. Louisiana, holding the Louisiana breach of the peace statute on its face "so broad as to be unconstitutionally vague under the First and Fourteenth Amendments". 379 U.S. at 576.

The constitutional impact of the insertion of the word "unreasonably" into the statute is most graphically illustrated by the following colloquy with Mr. Dukes, the law officer responsible for the enforcement of the statute in Forrest County.

"Q. Well now, Mr. Dukes, you are a law enforcement official of the county are you not?

A. I am Prosecuting Attorney.

Q. That's right. Now you are required to advise these law enforcement officials like Mr. Gray as to the law are you not?

A. Yes sir.

Q. Now if these people were walking four feet apart would you advise Mr. Gray that they were violating this statute?

A. If they were walking four feet apart?

Q. Yes sir.

A. I don't know, I would have to see it first.

Q. Well, what if they were walking---

A. (Interrupting) We set no scale as to 3 feet, 4 feet or 2 feet as such. The general thing I guess you would say that if they were walking so close together that it was it would have prevented a person from reasonably going through the line then they would have---

Q. (Interrupting) Well how do you reasonably go through a line, Mr. Dukes?

A. Well, the question of what is reasonable I believe, Mr. Smith, is one that people differ on.

Q. That's right, something that I could think would be reasonable you might not think so reasonable is that right?

A. That's right." R. 293, 294.

See, also, R. 298, 303, 337, 338.

This colloquy presents the heart of the constitutional problem of vagueness in the First Amendment area. If "the question of what is reasonable" is "one that people differ on", and if "unreasonably" becomes the dividing line between prohibited and permitted activity, then in truth, "such a statute does not provide for government by clearly defined laws, but rather for government by the moment-to-moment opinions of a policeman on his beat". Mr. Justice Black, concurring in striking down the Louisiana breach of the peace statute in Cox v. Louisiana, 379 U.S. at 579. The recent insertion of the word "unreasonably" now makes it crystal clear that "this kind of statute provides a perfect device to arrest people whose views do not suit the policeman or his superiors, while leaving free to talk anyone with whose views the police agree". Mr. Justice Black, supra, at 579. Whatever one may say about the unconstitutional vagueness of the statute on its face prior to the inclusion

of the word "unreasonably", cf. the dissenting opinion of Mr. Justice Black in Cameron, with the dissenting opinion of Circuit Judge Rives, it is now perfectly clear that the insertion of "unreasonably" as the dividing line between permitted and prohibited activity, renders the statute void on its face under both the approaches of Mr. Justice Black and Circuit Judge Rives. The entire question of the right to engage in activities within the penumbra of the First Amendment has now wholly passed to the policeman who must apply his own subjective understanding of what is "reasonable". The sensitive question of the right of citizens to exercise First Amendment liberties now turns on a "policeman [who] makes a decision on his own personal judgment" that the picketing or marching is "unreasonable" interference. 379 U.S. at 559. The testimony of Mr. Dukes, the Prosecuting Attorney, as well as Deputy Sheriff Morgan as to the subjective determinations they go through to decide whether picketing or marching is "unreasonable"interference, R. 294, 298, 303, 305, 337, 338, dramatically illustrate the truth of Mr. Justice Black's words in Cox, that such a statute provides for "government by the moment-to-moment opinions of a policeman on his beat." 379 U.S. at 559.

There are no precise narrowly drawn standards in the statute to guide the arresting officer as to when a citizen who is picketing or marching is "unreasonably" inter-

fering with free ingress or egress. Nor are there any administrative rules or regulations. R. 338. Everything is left to the discretion and judgment of the arresting officer. He alone must decide without standards or criteria what is the "unreasonable" interference. In the words of Mr. Justice Black in Cox, "in this situation I think Edwards v. South Carolina and other such cases invalidating statutes for vagueness are controlling". 379 U.S. 559.

Whether the addition of the word "unreasonably" now introduces the constitutional vice of vagueness and overbreadth into an otherwise acceptable statute, cf. Mr. Justice Black dissenting in Cameron, with Mr. Justice Black concurring in Cox, or whether it merely reinforces the conclusion that that the statute as originally written was overly broad and vague, cf. the dissenting opinion of Circuit Justice Rives in Cameron and the majority opinion of Mr. Justice Goldberg in Cox, it is now perfectly obvious that the Mississippi statute as amended is constitutionally invalid under "Edwards v. South Carolina and other such cases invalidating statutes forvagueness". 379 U.S. at 579. This is a statute which now turns over to the policeman the unlimited power based upon his own personal judgment as to what is "reasonable", to decide what views may be expressed on the streets. This the Constitution prohibits.

(d) The criteria in Dombrowski for the exercise of federal equity power where the challenge is to an overbroad statute in the area of free expression have been fully met.

The criteria laid down in the first branch of the Dombrowski analysis, where the challenge is to an overbroad statute in the area of free expression have been fully met. Whatever questions may have existed concerning the facial constitutionality of the Mississippi law have now been laid to rest as a result of the hearing on the Supreme Court remand.*/

The overbreadth and vague character of this statute which occasioned the original finding of Circuit Judge Rives that "it is difficult to conceive of a statute drawn in broader or more vague and sweeping terms", is now established beyond any shadow of a doubt. Both the subsequent introduction into the face of the statute of the word "unreasonably" and the striking new testimony concerning the subjective approach to enforcement which the statute permits have, as we have seen above, illustrated once again the

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*/ In a certain sense the wisdom of the majority of the Supreme Court requiring a rehearing of issues in the trial court becomes more apparent after a realization of the clarification and sharpening of the constitutional questions which the new record permits.

fundamental considerations underlying the doctrine of unconstitutional vagueness in the area of the First Amendment. This record, perhaps more vividly than any other recently developed, helps to explain the deep concern of the Court expressed first in Button and then restated in Dombrowski, with the "danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application". NAACP v. Button, 371 U.S. at 433; Dombrowski v. Pfister, 380 U.S. at 487. At the heart of this concern is the stark realization that vague and open-ended terms such as "unreasonably" or "mass demonstrations" result in turning over the most precious freedoms of American citizens to the subjective mercies of "the moment-to-moment opinions of a policeman on his beat". Mr. Justice Black concurring in Cox, 379 U.S. at 579. Statutes of this type permit the state to marshall "the full force of its criminal law to enforce its social philosophy through the policeman's club". Bush v. New Orleans School Board, 194 F. Supp. 182 (three-judge district court for the Eastern District of Louisiana, opinion by Circuit Judge Rives). */

*/ It is extremely interesting that the Court in Dombrowski in developing the concept of the "chilling effect upon the exercise of First Amendment rights", which flows from the threatened enforcement of overbroad laws in the area of free expression, specifically relies upon the opinion of the three-judge district court in Bush v. New Orleans School Board, supra. See Dombrowski, at p. 487.

But the right to exercise these liberties may not turn upon the subjective whim of a policeman who will tend to enforce the "social philosophy" of the state, Bush v. New Orleans School Board, supra, or as litigation in this Circuit has so often shown in recent years, the opinions of the "politically dominant white community". NAACP v. Button, supra. These rights must stand on far firmer ground, for as the Court has reminded us in Cox v. Louisiana, "maintenance of the opportunity for free political discussion is a basic tenet of our constitutional democracy". 379 U.S. at 552.

This record which has so graphically illustrated the vice of unconstitutional vagueness which results in turning over the protection of fundamental liberties to the subjective predilections of police authorities, also has demonstrated in a striking fashion the evils of selective enforcement which a broad prohibitory statute in the area of free expression permits. The statute, as amended, is clearly "unconstitutionally vague in its overly broad scope". See Cox v. Louisiana, (Majority opinion of Mr. Justice Goldberg for the Court, joined in by the Chief Justice, and Justices Brennan, Douglas and Stewart), 379 U.S. at 551; concurring opinion of Mr. Justice Black, 379 U.S. at 576. Furthermore, as we have seen the selective enforcement of this broad prohibitory statute trenching on the area of free

expression likewise violates the First and Fourteenth Amendments. Cox v. Louisiana (Majority opinion of Mr. Justice Goldberg, supra, at p. 553; concurring opinion of Mr. Justice Black, supra, at p. 581), as well as the Equal Protection Clause, Cox v. Louisiana (concurring opinions of Mr. Justice Black, at p. 581, and Mr. Justice Clark, at p.585). The Mississippi statute as amended with its clear record of selective enforcement stands condemned under the opinions of seven members of the Court. The criteria of the first branch of the Dombrowski analysis have been fully met. The state is proceeding with and threatens to continue to proceed with actual prosecutions under the provisions of an overly broad prohibitory statute violative of the First and Fourteenth Amendments. Under Dombrowski, the invocation of federal equitable power is appropriate and required.

3. The Mississippi criminal statute is being applied for the purpose of discouraging protected activities.

We have demonstrated that upon the record now made the criteria of the first branch of the Dombrowski analysis for the invocation of federal equity power have been fully met. We will now indicate that the record equally reveals that all the criteria for equitable relief set forth in the second branch of the Dombrowski analysis equally apply. As we have discussed above, Dombrowski holds that federal equitable relief is appropriate where state

criminal statutes, possibly valid on their face, are being "applied for the purpose of discouraging protected activities," 380 U. S. at 490, "without any hope of ultimate success," 380 U. S. at 490. Such prosecutions have a "chilling effect upon the exercise of First Amendment rights" and federal equity power is properly invoked.

The record of the recent hearing on the remand reveals beyond any possible question that the efforts to enforce the Mississippi statute have been made here without any real expectation of securing valid convictions but rather in an effort to "harass and discourage" citizens from "asserting and attempting to vindicate ... constitutional rights." 380 U. S. at 482.

A careful reading of the testimony adduced by both the plaintiffs and defendants at the October hearing reveals that there is surprisingly little conflict in the testimony as to the actual facts involved in the State's effort to enforce this statute. As Circuit Judge Coleman remarked at the conclusion of the hearing, "There's not much actual conflict in the testimony. There is a conflict in conclusions but there's not much conflict about what happened." R.342. We are in substantial agreement with this analysis of the record. We would suggest that the relatively uncontested record reveals in a striking fashion that the enforcement of the statute had little or no relationship to any legitimate

objectives of the state but had as its purpose the discouragement of protected constitutional activities.

(a) The record evidence reveals that the enforcement of the statute was not related to actual "obstruction" or "interference."

The virtually uncontested evidence reveals an extraordinary fact. The actual arrests under the statute had little or nothing to do with any actual "obstruction" or "interference" with public streets or the "egress" or "ingress" to entrances to public buildings. The record indicates that on the occasions of the arrests on April 10th and 11th there was no actual obstruction of egress or ingress or of public streets by the civil rights pickets whatsoever. The testimony of plaintiff's witnesses is clear and insistant that there was no such obstruction, that no persons were ever prevented from entering or leaving the courthouse. R. 20, 30, 32, 33, 54, 55, 56, 74, 98, 107, 108, 109, 126, 127.

What is really extraordinary is that the defendants' case wholly confirms this conclusion. The State was simply unable to obtain any evidence whatsoever of any actual obstruction or interference with ingress or egress on the crucial day of April 10th. On questioning by Judge Rives, Mr. Dukes, the County prosecutor, who was present during the arrests on April 10th, R. 227, testified that no personal complaints were made to him by anyone that they had under-

taken to gain access to the courthouse and that access had been blocked. R. 312. More than this, Judge Rives asked Mr. Dukes the following:

> "By Judge Rives:
>
> "Did you see anybody who was actually trying to get into the courthouse have their access blocked?" R. 313.

In answer to this crucial question Mr. Dukes had only one response. The only person he could recollect, and as to that he said, "I can't say positively," R. 313, was a Mrs. Burkett, who he told the court, "is one of the proposed witnesses here today /who/ attempted to leave her office and go into the courthouse and could not do so." R. 313. This story about Mrs. Burkett, an official in the Home Demonstration Office, which was near the little garden area around which the pickets walked was adverted to frequently by the State as the only actual evidence of "obstruction" or "interference" with egress or ingress on the crucial day of April 10th. Thus, Mr. Wells on cross-examination of Plaintiff's witness, Rev. Vaux, asked:

> "Didn't /you/ know as a matter of fact that she tried to come come out of her office to go around and go up in the County Agent's office that morning and could not get out?" R. 98 (emphasis added) See also R. 125.

Hundreds of people were apparently present to watch the expected arrests on April 10th. Mr. Dukes himself was

present. And yet the only evidence that anyone was "obstructed" or "interfered with" in getting into or out of the courthouse which the State of Mississippi could muster up was the story about Mrs. Burkett who, according to counsel for the State, "tried to come out of her office" and "could not get out." R. 125.

The simple fact of the matter, however, appears to be that Mrs. Burkett did come out of her office that morning and was able to pass through the picket line and get to her destination. This was her own testimony on direct examination for the State. R. 314 to 318. Her testimony is very clear. She was able to leave her office that morning, she was able to get to her destination in the County Clerk's office, she was not blocked in her office and she did "get out." As a matter of fact, she testified that she passed through the picket line by "weaving back and forth" R. 317, and reached her destination.

We discussed this episode in some detail, only because it illustrates so vividly the obvious fact that the arrests on April 10th had nothing whatsoever to do with " "obstructing" the entrances to the courthouse. This was purely an afterthought on the part of the State. In fact, there was no actual obstruction whatsoever, as even their own witness on the subject could have told them. On the evidence of Mrs. Burkett alone it is inconceivable that the

State, within the meaning of Dombrowski could have had "any hope of ultimate success," or any "expectation of securing valid convictions."*/ With all the resources of the State available the only evidence of actual or personal obstruction or interference other than the purely subjective opinions of the prosecutor, Mr. Dukes, and the arresting officer, Deputy Sheriff Morgan, R. 332, was the testimony of Mrs. Burkett that contrary to the prior inferences in the record by counsel for the State, she was not kept in her office, but did succeed in passing through the line and in proceeding to her normal destination. Any obstructions convictions for violation of the statute on the State's case here would obviously be void under Thompson v. Louisville, 362 U. S. 199, for want of any supporting evidence whatsoever.

(b) The afternoon arrests prove conclusively that the enforcement of the statute was not related to actual "obstruction" or "interference."

The fact that the enforcement of the statute had nothing to do with the supposed objectives of the statute,

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*/ It is significant that convictions for "obstructing" sidewalks or entrances to public buildings will not stand unless the evidence shows "substantial" or "serious" obstruction or interference. See, for example, People v. Carcel, 3 N. Y. 2d 327, 144 N.E. 2d 81; People v. Nixson, 248 N.Y. 182, 161 N. E. 463; cf. Edwards v. South Carolina and Cox v. Louisiana, both supra.

obstruction or interference, is most dramatically illustrated by the events of the afternoon arrests on April 10th. R.153-159.

The entire "theory" behind the State's explanation for the sudden enforcement of the statute on Friday was that the previous picketing had been relatively "small" and had not obstructed or interfered with ingress or egress to the courthouse, but when the picketing became much "larger" on Friday, April 10th, at that point the State ordered the arrests. The events of Friday afternoon explodes this attempted explanation. Throughout its presentation of the day's events the State talked solely about the morning arrests. See R.124. It is understandable why the State sought to avoid the events of the afternoon. If the theory was that the reason for the arrests in the morning was the large number of demonstrators who walked too closely together, figures varying from 30 to 39, R. 124, it becomes impossible to understand why Mrs. Williams and nine school children were arrested in the afternoon. R. 153-159.

The reluctance of the State to remember the afternoon arrests is quite understandable. It is virtually impossible to justify the afternoon arrests in terms of large numbers of people who were now obstructing the entrances. The only possible inference which can be drawn is that in truth both the morning and afternoon arrests were because the

plaintiffs were picketing and the State wanted to stop the picketing. After the afternoon arrests of Mrs. Williams and the nine students it becomes impossible to suggest that the arrests occurred because of an <u>increase</u> in the number of demonstrators resulting in obstruction of ingress and egress. This theory of why the statute was enforced could only have been advanced in the absence of the afternoon arrests. Mrs. Williams' testimony restores the situation to its blunt reality. On April 10th the State had decided to use the statute simply to stop all picketing. "Obstruction" of ingress and egress was a convenient afterthought which ran afoul of the forgotten facts of the afternoon arrests.

(c) The failure of the authorities to warn the demonstrators that they were obstructing the entrances to the courthouse indicates that obstruction was not the reason for the arrests.

One of the clearest indications throughout the entire hearing that the enforcement of the statute really had very little to do with the problem of "obstruction" or "interference" was the fact that the arresting authorities, Mr. Dukes, Sheriff Gray, or his deputies, never attempted to explain to the demonstrators that they were obstructing any entrances and never warned them of such obstructions. R. 39, 56, 113, 114, 143, 144, 153, 185, 226. No one on April 10th received any complaints from the police that they were blocking the entrances. R. 39, 226. This emerges very clearly throughout the record. For example see the following colloquy between the Court and plaitiffs' witness, Reverend Mehl:

"BY JUDGE RIVES:

"Were you warned to disperse or what warning was given to you before you were arrested?

"BY THE WITNESS:

"There was no warning given sir.

"BY JUDGE RIVES:

"Describe the circumstances of the actual arrest?

"BY THE WITNESS:

"Well, as we were walking around the court yard I guess you would call it in a very quiet and orderly fashion Mr. Gray came over and split the picket line and said to those who were on his left follow me.

"BY JUDGE RIVES:

"Had he told you before that that you were obstructing the entrance to the court house or interfering in any way with the passage of people?

"BY THE WITNESS:

"No, he hadn't and then the picket line followed him when he said follow me we began to follow him and he took us immediately into the jail which is behind the courthouse."

Again, see the discussion with plaintiffs' witness Reverend Vaux, who was recalled by the Court:

"BY JUDGE RIVES:

"Reverend Vaux, I would like to ask you just one or two questions concerning the morning of the arrests. Will you tell us the circumstances just preceding the arrest what warning was given, if any, and what how you were directed, what the circumstances were, how many times you had gone around the little quadrangle or circle whatever it is and what warning was given and all the circumstances as far as you can.

"BY THE WITNESS:

"How far back shall I go sir?

"BY JUDGE RIVES:

"Just the morning of the arrest.

"BY JUDGE COX:

"Immediately preceding the arrest.

"BY JUDGE RIVES:

"Immediately preceding the arrest.

"BY THE WITNESS:

"Could I start on the picket line or should I back up further.

"BY JUDGE RIVES:

"Were you given any warning before you got on the picket line?

"BY THE WITNESS:

"Oh no.

"BY JUDGE RIVES:

"Just start.

"BY THE WITNESS:

"On the picket line walking single file and we marched around two full cycles and saying that I would be the front of the line another half cycle or three-quarters of a cycle to the side of the court house and at that time the arrest there was a wall of men and the direction was to just walk around into the jail. I really don't recall any specific comments, they didn't say that we were arrested or...

"BY JUDGE RIVES:

"Well, preceding that did Sheriff Gray or anyone else warn you against obstructing entrances to the court house or unreasonably interfering with traffic or anything of that kind?

"BY THE WITNESS:

"Not that morning.

"BY JUDGE RIVES:

"The afternoon before I understand the

statute had been read or were you present?

"BY THE WITNESS:

"I wasn't present in the group but it was read, yes sir.

"BY JUDGE RIVES:

"But that morning you say no warning was given except direction after you walked around twice?

"BY THE WITNESS:

"That's right, no warning was given to me.

"BY JUDGE RIVES:

"Just what was said to you at the time you were directed to go a different direction?

"BY THE WITNESS:

"I don't recall any of the words. There were several men there and I don't recall any verbal words at all, it was just a direction and I asked one of the officials what is the charge they said I wouldn't want to repeat the statement they said about it you will find out later."

See also the testimony of plaintiff's witness Mrs. Connor at R. 226.

Adequate warnings by the arresting officers that the conduct complained of does in fact "obstruct" or "interfere" may well be a prerequisite to the constitutional sustaining of a conviction under such statutes, see for example Cox v. Louisiana, supra, at p. 570. Here, the total lack of any meaningful warnings demonstrates the lack of

concern on the part of the arresting officers with whether the conduct really obstructed anyone at all. As a matter of fact there was hardly enough time at all for the officers to observe whether the picketing Friday morning would actually interfere with anyone. The actual picketing apparently occurred for only five to ten minutes before it was totally prohibited. R. 41. There was barely enough time for the pickets to make more than two circles around the little garden area. R. 39. The absence of any adequate warning that the conduct obstructed ingress or egress thus highlights the fact that the arresting officers were concerned that morning not with correcting "obstruction" but with stopping all picketing. Again the uncontradicted testimony of Mrs. Williams in respect to the afternoon picketing undercuts even the tentative suggestion of Mr. Dukes that the Sheriff gave some sort of warning about "obstruction" in the morning. See R. 281. The State made no effort to contradict Mrs. Williams's testimony that when she and the nine students were arrested the "warning" they received was "he told us you march so well this way now march that way and and we marched the way he told us and we marched on to the Forrest County Court House jailhouse." R. 153. It is of course difficult to give a warning that the conduct of ten people walking around the garden area "obstructed" anything, and in fact the State does not suggest that any such warning was given in the afternoon.

(d) The record shows that the authorities had in practise sanctioned the type of activity for which plaintiffs were arrested.

One of the most unusual aspects of the record testimony was the revelation that the actual area in which the civil rights demonstrators marched had been designated by the city authorities as an area in which they were permitted to march. R. 20, 21, 48, 179, 277, 231, 272. Until the day of the arrests the actual area of picketing around the small garden area to the side of the courthouse had been marked off by the authorities with barricades as the only permissible place to march. R. 21, 272. Mr. Dukes himself testified that the barricades set up by the police designated an area in which people could picket which would "not block" the main entrance to the courthouse;

"BY MR. WELLS:

Q Well, now after these big marches and this great group was any effort made to set up some barricades and outline a place where they could picket?

A It was absolutely necessary, Mr. Wells, because the manner in which they originally picketed or marched completely blocked the front entrance of the court house and being in January and tax paying time we had to make some arrangements for our people to get to the court house so barricades were set up on the north and south side of the Main sidewalk into the court house blocking that area off so that it would not block the main entrance into the court house and in some areas a rope was attached

> to a portion of the barricade whereby we more or less prohibited the general public from going into this area and these people allowed to picket unmolested within that given area.

The picture which emerges from the testimony is very clear. When the major demonstrations of January developed the Hattiesburg police decided to limit the areas available to the demonstrators to a small area on the side of the courthouse which did not obstruct the main entrances. R. 272. Picketing here was perfectly permissible. R. 272. However, the authorities finally decided that even this limited picketing which they themselves had sanctioned was not to be tolerated. The plaintiffs were then arrested for "obstructing" in the very area which they had been told was the only area they could picket in. This conduct on the part of the authorities, in the words of the Supreme Court in Cox v. Louisiana, is "an indefensible sort of entrapment by the State--convicting a citizen for exercising a privilege which the State had clearly told him was available to him." 379 U. S. at p. 571. Any convictions under these circumstances would obviously fall under the rule of Cox v. Louisiana.*/ As the Court there said, "The Due

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*/ The facts in Cox in respect to the third branch of convictions there involved, the courthouse arrests, are almost identical to those of the April 10th arrests. In effect the Court says in Cox, the appellants had been told by the City that it was permissible to demonstrate where they were. See 379 U. S. at 571.

Process clause does not permit convictions to be obtained under such circumstances." 379 U. S. at 571. The rule of Cox applies here with even greater force. It would be a travesty on the most elementary concepts of fairness to permit convictions to stand for demonstrating in the very area the city itself had designated as permissible and as not obstructing the entrance to the courthouse. Such convictions could never stand under Cox. Such prosecutions are not pressed with any "real expectation of ultimate success." Dombrowski, at 490. They are obviously not pressed to alleviate any legitimate concern with "obstructing" ingress or egress to public buildings. Otherwise, the demonstrators would never have been told they could demonstrate in that confined area. Moreover, why did the authorities take down the barricades just before the arrests if the presence of the barricades had facilitated ingress and egress to the building? Cf. testimony of Mr. Dukes, R. 272. The answer is simple. The purpose of the arrests was not to cure a non-existent "obstruction" to egress or ingress. It was to discourage the plaintiffs from any picketing at all.

(e) <u>The application and enforcement of this statute has had a "chilling effect" upon the exercise of fundamental constitutional rights.</u>

The record evidence is clear as to the objectives of the picketing conducted in Hattiesburg. The purpose of the picketing is not contested by the State and was put well by Reverend Brown:

> "A Well, the reason of the picketing as far as I understood was to assist the Negro people in several ways, one of which was to give to the Negro community a source of strength and confidence that there were people who cared about their movement and their desire to register, that perhaps our being there might be possibly a deterrent to any violence that might accrue, that also the picket line as I understood it would also be a word to the community at large concerning the state of unrest in the Negro community concerning this right and others that all was not well in the Negro community."R. 18

Reverend Vaux placed the purpose of the picketing this way:

> "The purpose of the picket line was to lend moral support and visible support to our voter registration program." R. 73.

See also R. 99, 106, 118, 158, 162, 163, 168, 169, 171.

The intimate relationship between the picketing and the voter registration activities was put clearly by Reverend Cameron, one of the leaders of Hattiesburg Negro voter registration movement:

> "The purpose of the picketing was to lend faith and encouragement to the local Negro community because of the fear and so many of the citizens in the Negro community felt that without some help that they would not be able to go to the registrar's office to register to vote and with many testimonies from them that after they were able to see white ministers and laymen on the picket line. R. 169

The impact of the enforcement of the Statute on April 10th upon both the exercise of First Amendment rights and Fifteenth Amendment rights was extremely serious. The picketing dwindled down to handfuls of people until the middle of May when a second series of arrests cut it off completely. R. 227, 236, 240, 191, 193, 194, 253. Registration to vote efforts likewise palled. R. 191, 192, 252, 253.

There can be no question that the picketing, considered serious and important to the voter registration drive, ended abruptly as a result of the enforcement of the statute. It might be suggested, however, that the reason for the termination of the picketing could be found in a spurt in voter registration activity in May of 1964, resulting in a "new" situation in Forrest County. Cf. R. 204-219. In fact the State suggested at one pointthat the present figure of some 3000 Negro registered voters in Forrest County illustrates the absence of a "chilling effect" upon the exercise of constitutional rights after the enforcement of the statute. This inference totally misrepresents the

actual situation in Forrest County for many months after the enforcement of the statute. No "spurt" in voter registration occurred in May of 1964 or for many months thereafter. As late as June of this year the Court of Appeals was required to institute extraordinary relief to alleviate the disenfranchisement of Negro citizens in Forrest County. United States v. Lynd, 349 F. 2d 785 (June 16, 1965) and United States v. Lynd, 349 F. 2d 790 (June 16, 1965). In the latter opinion, the Registrar of the County, Mr. Lynd, was held in contempt of the Circuit. The voting situation in Forrest County was described only this June in this manner: "Negroes have been denied this precious Constitutional right because they are Negroes." In addition, the Court pointed out that "the denial of these rights--at one and the same time a violation of the Constitution and orders of this Court--demands a correction." And the Court said as of June, "At the snail's pace to date, it will take decades to eradicate the evil."

The increase in registration in Forrest County, still less than one-third of the eligible Negro voters, has occurred only this summer as the Court's opinions in United States v. Lynd will reveal, and has occurred quite obviously as a result of the impact of the federal order of the Circuit Court and the impetus of the new 1965 voting rights act.

The "chilling effect" of the groundless prosecu-

tions initiated by the State under House Bill 546 remained for months. If it has worn off at all, it is because of the effect of the Federal stay of prosecutions presently operative. If this Court should fail to enjoin the enforcement of the statute the "chilling effect" will suddenly and greatly intensify. First Amendment liberties must be protected whether or not the National Government has independently taken steps to help to eradicate the great and old evils which the exercise of First Amendment rights in this situation were designed to achieve. The objectives of Congress in passing the Voting Act of 1965 as well as the purposes of the Court of Appeals in imposing its contempt order against the Registrar require for their full success the active participation of the Negro citizens of the State in the electoral and registration processes. This in turn requires the full and free exercise of the fundamental First Amendment rights by the Negro citizens of the State. A statute, the enforcement of which casts a chilling effect upon the exercise of these liberties cannot be tolerated.

We would suggest that the present record brings forward a classic situation for the application of the criteria present in the second branch of the Dombrowski analysis. The State has invoked and continue to invoke threatens to criminal process without any hope of ultimate success. There can be no expectation of valid convictions where there is no evidence to support the charge of violation, where the

statute is concededly and openly selectively enforced, where the authorities have entrapped the citizens into the conduct complained of--in short, where the prosecutions are not directed to the legitimate ends of the criminal law, but are part of an attempt to discourage citizens from "asserting and attempting to vindicate ... constitutional rights." Under Dombrowski a federal court of equity is called upon to exercise its power to protect American citizens from this misuse of State criminal process.

POINT II

28 U.S.C. 2283 DOES NOT BAR A FEDERAL INJUNCTION IN THIS CASE.

We turn now to a consideration of the initial question posed in the order of remand of June 7th: "whether 28 U.S.C. 2283 bars a federal injunction in this case."

Title 28 U.S.C. 2283 provides as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

It is the position of the plaintiffs that this provision does not bar federal equitable relief in this case. Section 2283, of course, relates by its terms only to a stay of "proceedings in a state court". It affects no other aspect of federal equitable power. It has no relation to federal power to restrain the future enforcement of a state criminal statute, Ex parte Young, 209 U.S. 123. See discussion in Dombrowski v. Pfister, supra, footnote 3, at p.484, nor does it affect in any way the power of a federal court to stay proceedings in a state court instituted after the commencement of a federal action. Dombrowski v. Pfister, supra, at p. 484. Accordingly, it must be made clear at the outset of this discussion that the portions of the injunctive

relief prayed for here which involve restraining the future enforcement of the Mississippi statute are wholly unaffected by the question of any possible applicability of 2283. The only question involved here is the possible impact of an injunctive decree upon the pending criminal prosecutions for violation of the statute. We turn our attention to this limited problem.

1. Title 28 U.S.C. 2283 is wholly inapplicable here in that there are no pending state proceedings which will be stayed by the federal injunction.

Section 2283 does not apply to the injunctive relief here sought for the simple reason that there are no presently pending state court proceedings which can be affected by the injunctive relief contemplated. Section 2283 by its own terms relates only to "state court proceedings". All the state court proceedings initiated under this statute have been removed to the federal courts. See Appendix B to this memorandum. All of these proceedings are presently pending in the federal courts. All of them are both for practical purposes and juridically speaking "federal court proceedings".

It is, of course, longsettled law that the filing of a removal petition in the federal court totally deprives the state court of any jurisdiction in the matter unless

and until the cause is finally remanded.*/ The entire proceeding is, in the words of the statute "removed from the state courts." It is in every sense a "federal" proceeding. The plain words of the removal statute, Title 28, U.S.C.1446, are that on compliance with the procedural requirements of filing "the state court shall proceed no further unless and until the case is remanded". The simple fact of the matter is that there are presently pending no state court proceedings which could be affected by a decree to be issued by this Court restraining state officials from proceeding with pending prosecutions under the state statute.

All of the prosecutions under the challenged statute are presently pending in the federal system. No cases have been finally remanded to the state courts. Quite to the contrary, most of the orders of remand entered by the district court have only recently been reversed by the Court of Appeals for the Fifth Circuit. See, for example, Carmichael v. City of Greenwood, #27289 C.A. 5, Sept. 30, 1965 (per curiam opinion by the Court, Circuit Judges Rives,

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*/ The law is clear that the effect of the removal of a case to the federal court is to deprive the state court of any jurisdiction to proceed unless and until the cause is remanded. Saslow v. State Mutual Automobile Insurance Co., 224 F. Supp. 965 (D.C. Alaska, 1963); see also Garden Home, Inc. v. District Court of Somerville, 336 Mass. 452, 146 N.E. 2d 372 (1957).

Brown and Wisdom, reversing and vacating the orders of remand and returning the causes to the District Court "for further consistent proceedings, including such factual hearings as may be appropriate with respect to both procedural and substantive matters".*/

The conclusion to be drawn from the present procedural situation is clear. There are no presently pending state court proceedings which may be affected by the equitable relief which may be contemplated by this Court. All such pending court proceedings under the Mississippi statute are federal court proceedings which quite obviously are not affected by the plain words of 2283.

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*/ Furthermore, to emphasize the conclusion that the proceedings remained within the federal system, the Court of Appeals ordered that to "avoid any conflict between the United States District Court and the courts of Mississippi, and the respective officers thereof with respect to the arrest or confinement of any or more or all of appellants-petitioners", the stay provisions of the previous Court of Appeals order were to remain in effect. Carmichael v. City of Greenwood, supra.

It might possibly be suggested that while concededly there are at present no pending state court proceedings which may be affected by a present decree to be issued by this court, nevertheless at some later time the cases may be finally remanded to the state courts and the decree might then affect "state court proceedings". This contention totally misses the point. If this Court restrains the enforcement of the statute and the present efforts of the state to proceed with the prosecutions, the cases will of course never "return" to the state courts. They will be halted, as they should be, as violative of the Constitutuion. The equity decree halting the prosecutions will issue without any fear of interfering with "state court proceedings", the only legitimate concern of 2283, because <u>at the time</u> of issuing the decree there will be no state proceedings to be interfered with. No possible principle of comity will be transgressed against and federal power in vindication of federal rights will have properly been exercised.

2. <u>In any event 2283 does not apply to the injunction contemplated since the relief sought is expressly authorized by Congress</u>.

We have just pointed out that there are no presently pending state proceedings which might be affected by the injunctive decrees to be issued here. If however for

the sake of argument it might be considered that the presently pending proceedings in some way "remain" state court proceedings although removed to the federal system, nevertheless injunctive relief affecting such proceedings is not barred by 2283.

Section 2283 by its own terms provides for an exception ot its stated prohibitions where the injunctive relief sought is "expressly authorized by Act of Congress." The injunctive relief here prayed for, in so far as it conceivably might affect pending state court proceedings is "expressly authorized" by Acts of Congress. This injunctive relief is "expressly authorized" by both Title 42 U.S.C. Section 1971 and Title 42 U.S.C. Section 1983.

a) <u>The injunctive relief sought is expressly authorized by 42 U.S.C. Section 1971.</u>

The complaint in this proceedings seeks relief <u>inter alia</u> pursuant to 42 U.S.C. 1971. See Amended Complaint, paragraph Six. 42 U.S.C. 1971 prohibits the intimidation, threatening or coercing of "any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose..." The Section as amended in the 1964 and 1965 Acts provides for a pattern of available

remedies to protect these rights.*/ The complaint clearly sets forth a cause of action grounded on Section 1971. The plaintiffs have alleged that the statute is in part designed and operated to intimidate and deter Negro citizens of the state from registering to vote, a right protected under Section 1971, as well as the Fifteenth Amendment.

This Circuit has clearly indicated that 42 U.S.C. 1971 "expressly authorizes**/ injunctive relief against state criminal proceedings. United States v. Wood, 295 F2d 772 (CA 5, 1961, opinion by Circuit Judge Rives.)

In Wood, the United States sought injunctive relief pursuant to 1971 against a state court criminal proceeding. The government in arguing that 2283 was no bar to the relief sought urged inter alia that 1971 "expressly authorized" the injunctive relief sought against a state court proceeding. While the Court did not directly reach

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*/ While 1971 also creates certain specific remedies for the United States it is perfectly clear that 1971 involves private constitutional rights which may be asserted by the primary individuals involved. United States v. Raines, 362 U.S. 17.

**/ As we shall point out in our subsequent discussion of whether Title 42 U.S C. 1983 "expressly authorizes" injunctive relief against state proceedings, the proposition is now well estabiished that 2283 does not require that an exception to it refer specifically to 2283. Amalgamated Clothing Workers v. Richmond Brothers, 348 U.S. 511; See also Dilworth v. Riner, Sec. 22008 CA 5, 1965.

this question, holding that under Leiter Minerals, Inc. v. United States, 352 U.S. 220, the anti-injunctive statute does not apply where the suit is brought by the United States, the careful reasoning of the opinion leaves no doubt that the weight of authority in this Circuit is that 1971 "expressly authorizes" the type of relief sought. */

In his opinion for the Court, Circuit Judge Rives points out that in enacting 1971 Congress had directly in mind the necessity of relief against state criminal processes. Thus Judge Rives wrote for the Court:

> "The legislative history of Section 1971 would indicate that Congress contemplated just such activity as is here alleged -- where the state criminal processes are used as instruments for the deprivation of constitutional rights." 295 F2d at p. 781.

The conclusion to be drawn is clear. If the use of state criminal processes to deprive citizens of constitutional rights was within the direct contemplation of Congress in authorizing the equitable relief Section 1971 provides for it is self-evident that within the meaning of 2283, Congress has "expressly authorized" the use of injunctive

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*/ See for example Dombrowski v. Pfister, 227 F.Supp. at p. 582, (dissenting opinion of Circuit Judge Wisdom in the three-judge district court, commenting that the clear import of United States v. Wood is a holding that "the Civil Rights Act, 42 U.S.C. 1971 expressly authorized injunctive relief against state criminal court proceedings and thus falls squarely within the stated exception to Section 2283."

relief against such state criminal proceedings. */

b) The injunctive relief sought is expressly authorized by 42 U.S.C. Section 1983.

The complaint, as we have discussed above, alleges that the Mississippi statute is being applied for the purpose of discouraging protected activities. This clearly states a cause of action for relief under the Civil Rights Act, 42 U.S.C. 1983. **/ Dombrowski v. Pfister, supra, at p. 490.

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*/ There seems to be little doubt that in enacting 1971 Congress intended to include equitable relief against state court proceedings where necessary. See discussion of legislative history in United States v. Wood, supra, at p. 782. It is interesting in this connection that as the Court there points out "remarks of Southern Congressmen clearly indicate that they foresaw the intended reach of these civil sections and foresaw that injunctive proceedings in the federal court might supplant state court proceedings." United States v. Wood, supra, at p. 782.

**/ 42 U.S.C. 1983 provides as follows:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (emphasis added).

By its own terms 1983 specifically grants an equitable remedy against action "under color of" a state statute which subjects "any citizen or other person" to the deprivation of any rights, privileges or immunities secured by the Constitution and laws." The question here posed is whether this congressional enactment "expressly authorizes" equitable relief against pending state court proceedings within the meaning of 2283.

This issue has been specifically reserved as an open question by the Supreme Court. The order of remand in this case directs this Court's attention to footnote three in the Dombrowski opinion. The footnote concludes as follows:

> "We therefore find it unnecessary to resolve the question whether suits under §1983 come under the 'expressly authorized' exception to §2283. Compare Cooper v. Hutchinson, 184 F.2d 119,124 (C.A. 3d Cir. 1950), with Smith v. Village of Lansing, 241 F.2d 856, 859 (C.A. 7th Cir. 1957). See Note 74 Harv.L.Rev. 726, 738 (1961)." Dombrowski, supra, at p. 484.*/

*/ In Dombrowski the Court found that the federal plenary action had been instituted prior to the institution of the state court criminal proceedings since the Court reaffirmed the holding of ex parte Young that the federal anti-injunction statutes do "not preclude injunctions against the institution of state court proceedings", it was unnecessary for the Court to resolve the question as to whether suits under 1983 come under the "expressly authorized" exception to 2283. Dombrowski, supra, at p. 484.

We have argued here that 2283 is wholly inapplicable since there are no presently pending "state court proceedings" which can be affected by a federal equitable decree. We have further pointed out that the relief sought is in any event "expressly authorized" by Section 1971. Accordingly it is unnecessary for this Court to reach the question left open in Dombrowski as to whether suits under 1983 come under the "expressly authorized" exception to 2283.

If however the Court should feel it necessary to reach this question we would suggest that both upon principle and precedent in this Circuit and in the Supreme Court the answer is clear that federal equitable relief against state court proceedings which are used as "instruments for the deprivation of constitutional rights" cf: United States v. Wood, supra, is "expressly authorized", by Section 1983, within the meaning of Section 2283.

(i) The consistent analysis advanced in this Circuit is that the Civil Rights Statutes authorize injunctive relief against state court proceedings.

In this Circuit a clear understanding has emerged that the Civil Rights Statutes authorize federal injunctive relief against state court proceedings which are used as "instruments for the deprivation of constitutional rights." United States v. Wood, supra. As we shall point out in

this discussion it is not coincidental that this understanding should emerge in the clearest fashion in the Circuit which has been most deeply concerned with the complex problems of the enforcement of the rights secured to Negro citizens by the Wartime Amendments. And it is further not coincidental that the Supreme Court's own recent reassertion of the sweep of federal equitable power in respect to state criminal proceedings rests in large measure upon the thinking and experiences of this Circuit. Cf. Dombrowski v. Pfister, supra, at 487.

The recent opinion of the Circuit in Dilworth v. Riner, March 18, 1965, No. 2208 [opinion by Bell, C.J., joined in by Brown, C.J. and Hunter, D.J.] is instructive in this respect. In Dilworth the case presented as a question of first impression the issue as to whether the Civil Rights Act of 1964, and in particular Section 204 (a) of the Act "constitutes congressional authorization for the staying of state prosecutions by federal courts" within the meaning of Section 2283. In holding that Section 204(a) came under the "expressly authorized" exception to 2284 the Circuit utilized an analytical approach of some assistance here.

The Court first pointed out that as a threshold proposition 2283 does not require that an exception to it specifically refer by words to 2283. This has been clearly

held in Amalgamated Clothing Workers v. Richmond Brothers, 348 U.S. 511 (1955).*/

Next, the Court in Dilworth pointed out that the authorizing statute need not refer in so many words to the issuance of federal stays against state court proceedings.

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*/ The original version of section 2283 was section 5 of the Act of March 2, 1793, 1 Stat. 335, which provided that:

> "...now shall a writ of injunction be granted... to stay proceedings in any court of a state..."

In 1874 an exception was engrafted onto this provision, and its language was slightly rephrased, so that it read (36 Stat. 1162, 28 U.S C. §379, §265 of the Judicial Code of 1911):

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This language remained intact until the revision of 1948.

Notwithstanding the near-absolute language of the act, however, the Supreme Court over the years found a variety of "implied exceptions" to the sweep of its prohibition. See, e.g., Toucey v. New York Life Insurance Co., 314 U.S. 118 (1941); 1A Moore's Federal Practice ¶0.208[2], [4], pp. 2302, ¶0.209 p. 2401 et seq.; Hart & Wechsler, The Federal Courts and The Federal System, 1075-1076 (1953). One category of such "implied" exceptions, prior to the 1948 revision, was the so-called "statutory" exceptions, i.e., exceptions which appeared to be authorized by other federal statutes. See Toucey v. New York Life Insurance Co., 314 U.S. 118, 132-134 (1941). Other exceptions, not grounded upon federal statutes, were also recognized. See Toucey v. New York Life Insurance Co., supra at 134 et seq.

The 1948 revisions are regarded as undoing whatever effect Toucey had on limiting the statutory and judicial

The Court commented: "Nor do we believe that the language of the authorizing statute need refer to the subject matter of federal stays of state court proceedings." Dilworth v. Riner, supra.*/

Since the congressional authorization need not refer in specific words to 2283, nor need it spell out directly the subject matter of federal stays against state court proceedings, the Circuit turned to the only sound guiding principle for determining "express authorization" within the meaning of 2283 -- "the statutory purpose sought to be achieved." Applying this criteria the Circuit then found that since Section 204(a) created an equitable remedy to protect the rights secured in the prior provisions the statutory purpose must have included equitable relief against

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(Footnote continued from preceding page)

exceptions to 2283. It restored the basic law to the pre-Toucey situation. See Hart and Wechsler, The Federal Courts and the Federal System, 1075, "therefore the revised section restores the basic law as generally understood and interpreted prior to the Toucey decision."

*/ In support of this conclusion the Court analogized from its own recent decision in Beal v. Waltz, 309 F.2d 721 [CA 5, 1962], in which the Circuit followed the Supreme Court decision in Providence&New York Steamship Company v. Hill Manufacturing Company, 109 U.S. 528, in construing 46 U.S.C. 185 (the admiralty limitation of liability provision) as authorizing a federal court to enjoin state court proceedings. The Dilworth court points out that although Section 185 contains no mention of stays against state courts, "the statutory purpose sought to be achieved under the limitation of liability statute required no less." - emphasis added. See also Hart and Wechsler, op. cit. at 1076.

state court proceedings where those proceedings were used in such a way as to punish persons for exercising rights protected under the Act.

The relevant question which thus emerges is whether Congress intended the statute to authorize relief against state court proceedings. This is precisely the rationale followed by the Circuit in holding in Wood that the equitable remedy granted in 42 U.S.C. 1971 is broad enough to reach pending state criminal proceedings. In his opinion for the Court, Circuit Judge Rives relied upon the fact that the legislative history of the Civil Rights Act of 1957 showed that Section 1971(c) was intended to cover the same acts reached under the civil rights criminal statutes already on the books, Title 18 U.S.C., Sections 242 and 241. United States v. Wood, supra, at p. 782. Since these statutes include within their sweep activities occuring in state court proceedings */ the Circuit concludes in Wood that Congress intended the same coverage in enacting 1971. Since it is clear that the Civil Rights Criminal Provisions, 242 and 241 of Title 18, cover situations in which "the state criminal processes are used as instruments for the deprivation of constitutional rights", the Wood court reasons that it must of necessity follow that Congress contemplated

*/ In support of this conclusion the Court in Wood cites Culp v. United States, 131 F.2d 93 (CA 8); Brown v. United States, 204 F.2d 247 (CA 6) and Screws v. United States, 325 U.S. 91.

that under similar circumstances the equitable remedy created in 1971 would appropriately be available. United States v. Wood, supra at 781, 782.

The rationale followed by the Circuit in both Wood and Dilworth compels the conclusion that Section 1983 authorizes injunctive relief against state court proceedings within the "express authorization" exception to Section 2283.

As Judge Rives has pointed out in respect to Section 1971, it has been equally recognized that Section 1983 is the civil counterpart of 18 U.S.C. 242, see Monroe v. Pape, 365 U.S. 167, and was designed to reach the same conduct which is punishable under 18 U.S.C. 242.

Thus, Congressman Shellabarger, Chairman of the House Select Committee which drafted the Act of April 20, 1871, now §1983, said that (as described in Flack, The Adoption of the Fourteenth Amendment, at p. 228 (1908)):

> [T]he first section of the proposed bill [the Act of 1871] was modeled upon the second section of the Civil Rights Bill of 1866, the only difference being that this one provided for civil remedy where the bill of 1866 provided for criminal proceeding. . . . (emphasis added)

Similarly, in Monroe v. Pape, supra, Mr. Justice Frankfurter, dissenting, said (365 U.S. at 212-213, n.18):

> Mr. Shellabarger, Chairman of the House Select Committee which authored the Act of April 20, 1871, whose first section is now

> 1979 [of the Revised Statutes, now section 1983 of Title 42] reported to the House that that section was modeled upon the second section of the Act of April 9, 1866, 14 Stat. 27, and that the two sections were intended to cover the same cases, with qualifications not relevant here. Cong. Globe, 42d Cong., 1st Sess., App. 68. See also id., at 461. The 1866 provision had been re-enacted, substantially and in form, by the seventeenth and eighteenth sections of the Act of May 31, 1870, 16 Stat. 140, 144, and the 1874 revision of the provision was in turn patterned on the present §1979. See Screws v. United States, 325 U.S. 91, 99-100. The sections have consistently been read as coextensive in their reach of acts "under color" of state authority. (emphasis added)

In short, since the criminal provisions dating from the Act of 1866 were clearly designed to reach deprivations of rights occurring in state courts,*/ and since §1983 is the civil equivalent of the criminal provisions, it seems clear that Congress intended the civil remedy to reach as far as injunctions against state court proceedings.

If the key question to be asked in determining whether injunctive relief is "expressly authorized" within the meaning of 2283 is the question asked by the Wood court and the Dilworth court, namely, what was the statutory purpose sought to be achieved, then the answer in respect to

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*/ Under 18 U.S.C. 242 prosecutions may be brought for deprivations of civil rights occurring in connection with state court proceedings. See for example Culp v. United States, 131 F.2d 93; Brown v. United States, 204 F.2d 247; Screws v. United States, 325 U.S. 91, 126 (Rutledge, J. concurring).

Section 1983 is clear. It is to be found in the exhaustive legislative history of the provision analyzed carefully in both the majority and dissenting opinions for the Court in Monroe v. Pape, 365 U.S. 167. In Mr. Justice Douglas' opinion for the Court one question emerges time and again in his discussion of the history of the provision. Central among the concerns of the Reconstruction Congress which enacted the statute were the deprivations of rights of citizens which occurred in the course of court proceedings. The misuse of state court proceedings, and in particular criminal proceedings, was at the very heart of the breakdown in constitutional protection which the Ku Klux Klan Act [the statutory predecessor of 1983] was designed to provide federal remedies for. Over and over again in setting forth the legislative history of the statute the misuse of the judicial proceedings in the former slave holding states occupied the principal concern of the enactors. See for example 365 U.S. 174, n.10; 178, 179.

The dissenting opinion of Mr. Justice Frankfurter likewise highlights the congressional concern with violations of constitutional rights committed through the misuse of state judicial proceedings. */

*/ It should be borne in mind that the difference between the majority and the dissent in Monroe had nothing to do with whether "color of law" in the statute included judicial proceedings. Both opinions assume this. The difference lies in the further sweep of the "color of law" concept beyond formal organs of law.

As Justice Frankfurter points out the earlier Act upon which Section 1 of the 1870 Act was based (the predecessor to 1983) "had as its primary objective the effective nullification of the Black Codes, those statutes of the Southern legislatures which had so burdened and disqualified the Negro so as to make his emancipation illusory." 365 U.S. at 225. The main thrust of the Black Codes was the utilization of a wholly discriminatory system of criminal laws and criminal proceedings designed to restore the freedman to his ante-bellum status.*/ It is understandable therefore that there should have been deep Congressional concern with the misuse of state court proceedings as "instruments for the deprivation of constitutional rights." Cf. United States v. Wood, supra.

There may be many complicated questions as to the scope and breadth of the concept of "color of law" in the Reconstruction legislation. Cf. Williams v. United States, 341 U.S. 97; Screws v. United States, supra; United States v. Classic, 313 U.S. 299; and cf. United States v. Price, October Term, 1965. But there can hardly be any

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*/ See for example 1 Fleming, Documentary History of Reconstruction, 273-311; 2 Commager, Documents of American History, 2.7; Randall, The Civil War and Reconstruction, all cited in Justice Frankfurter's opinion in Monroe v. Pape at 225, Fn. 35.

argument as to whether "color of law" includes "color" of judicial proceedings or judicial officers. Cf. Ex Parte Virginia, 100 U.S. 339. Mr. Justice Frankfurter points out that in outlining his understanding of the statute involved President Johnson in his veto message described the statute in this fashion:

> "It means a deprivation of the right itself, either by the State judiciary or the State Legislature." Emphasis added. Cong. Globe, 39th Cong. 1st Sess. 1680, cited in 365 U.S. at 226.

The objections to the legislation were phrased in terms of criticizing the federal law as penalizing "state judges" acting under color of state laws. Cong. Globe 42 Cong. 1st Sess., 365. The evils which the statute are directed against include situations when in a State's "judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another," Cong. Globe, 42 Cong. 1st Sess. App. 315, or where "the courts of the. . .States fail and refuse to do their duty in the punishment of offenders against the law" id. at App. 179, or in which "a class of officers charged under the laws with their administration. . . refuse to extend [their] protection" id. at 334.

The majority opinion of Mr. Justice Douglas and the dissenting opinion of Mr. Justice Frankfurter in Monroe are filled with instances of this deep legislative concern.

Time does not permit of a more intensive historical examination of the question but the exhaustive legislative history analysis in both Monroe opinions proves beyond any possible question that one of the central objectives of the enacting Congress was to provide remedies for the widespread misuse of state judicial proceedings which resulted "in the deprivation of constitutional rights." Cf. United States v. Wood, supra. The analytical approach of the Dilworth and the Wood courts, as applied to the legislative history of 1983, requires a conclusion that a clear "statutory purpose sought to be achieved", Dilworth v. Riner, supra, in the enactment of 1983 was the remedying of the misuse of state court proceedings which result in the "deprivation of constitutional rights." United States v. Wood, supra. Accordingly the injunctive remedy specified in 1983 falls within the "expressly authorized" exception of Section 2283.

This conclusion is consistent with the increasing concern evidenced by this Circuit over the last years with the increasing use of state criminal statutes and proceedings as techniques to harass and deter efforts to obtain equality for Negro citizens through the exercise of fundamental federal rights. In decision after decision judges of this Circuit have commented upon the use of criminal proceedings under sometimes facially valid laws which have the effect of deterring and intimidating citizens from exercising basic

rights regardless of the ultimate outcome of the state criminal proceeding. See for example United States v. Wood, supra; Bush v. New Orleans School Board, supra; Aelony v. Pace, 32 CW 2715 (three-judge court, Georgia, Nov. 1, 1963, opinion by Chief Judge Tuttle; injunction issued restraining pending state court proceedings). Dombrowski v. Pfister, 227 F.Supp. 556, 569 (dissenting opinion of Circuit Judge Wisdom); Bailey v. Patterson, 323 F.2d 201; Cox v. Louisiana (CA 5, supra, June 29, 1965)

From Browder v. Gayle, 147 F.Supp. 707 in 1956 to Cox v. Louisiana only this June this Circuit has consistently strengthened and protected the federal equity power as a shield and a protection against the misuse of state criminal laws and criminal proceedings. Its decisions have become the foundation stones for the Supreme Court's own reexamination of the vitality and importance of federal equity power in the protection of fundamental constitutional rights. See Bush v. New Orleans Parish School Board and Dombrowski v. Pfister (dissenting opinion in three-judge court), both supra. Out of these decisions have emerged an understanding which is now at the heart of the restatement of federal responsibility implicit in last Term's decision in Dombrowski -- that where state court criminal proceedings or statutes are utilized for the purpose of detering and intimidating citizens from exercising fundamental federal

rights the very principles of comity which draw their vitality from the Federal system and which govern Section 2283 require the exercise of federal power to restrain state court proceedings which threaten these basic federal rights.*/

Circuit Judge Wisdom expressed this concept for the Circuit in his recent opinion in Cox v. Louisiana, supra, when he wrote:

> "When a State, under the pretext of preserving law and order uses local laws, valid on their face, to harass and punish citiznes for the exercise of their constitutional rights or federally protected statutory rights, the general principle must yield to the exception: the federal system is imperilled."**/

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*/ Section 2283 is of course considered as embodying "principles of comity." Smith v. Apple, 264 U.S. 774; Moore, Commentary on the Judicial Code, Sec. 03 (49) p. 407

**/ Based upon this fundamental analysis of the federal system Judge Wisdom pointed out for the Court that in that situation involving a pending state court criminal prosecution in which the district attorney's "transparent purpose is to harass and punish the petitioner for his leadership in the civil rights movement, and to deter him and others from exercising rights of free speech and assembly in Louisiana. . . . a civil complaint asserting such an abuse of prosecutional function would state a claim under the Civil Rights Act, 42 U.S.C. 1983, and justify injunctive relief, Dombrowski v. Pfister, 1965, 380 U.S. 479." (emphasis added)

The rules of comity which govern the relationship of the federal courts to the state courts, the "general principle" Judge Wisdom refers to, must reflect the nature of the political system they are designed to operate within. This is a Federal union. It is not a confederation of equal sovereign powers. The doctrines of American federalism which have emerged through struggles and conflict can only be understood in terms of the original repudiation of the political philosophy underlying the Articles of Confederation. Fundamental to the system of government which emerged after 1787 was the recognition that the alliance of independent and separate ~~sovere~~eign states had been replaced by a Federal Union. This new political form represented a bold experiment in government. In order to preserve the values of the independent local self-government entities which the states represented, within the framework of a unified Nation with power to survive and protect the interests of all its citizens, a fundamental allocation of responsibilities had to be made. In this distribution of power the primary responsibility for the protection and preservation of the Union itself and the system of government upon which it rests fell upon the national government.

It is within this context that the relation of 1983 to 2283 must be examined. The preservation of American federalism, the necessary objective of any rule of comity, requires that this original and fundamental division of

responsibility between the national government and the states be respected. The healthy values of a federal system are no more served by a denial of national responsibility than by an intrusion into local responsibility. Upon the national government and the national courts has been placed the primary responsibility for the preservation of those aspects of government essential to the existence of the Federal Union.

Congress in enacting Section 1983 in the Reconstruction Era fashioned a remedy for the protection of fundamental federal rights granted to all citizens, and especially the race of freedmen, by the Wartime Amendments. The protection of these rights are essential in every sense to the preservation of the Union. Any thoughtful analysis of the rules of comity which are said to underlie Section 2283 thus reinforces the conclusion that Section 1983 must be held to be an "expressly authorized" exception within the meaning of Section 2283.*/

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*/ The opinion of the majority of the Fourth Circuit in Baines v. City of Danville, 337 F.2d 579 (Circuit Judges Haynsworth, Boreman and Bryan; Chief Judge Sobeloff, and Circuit Judge Bell dissenting) that Section 1983 is not an "expressly authorized" exception to 2283 has little persuasive weight after Dombrowski v. Pfister. The majority of the Circuit rests wholly upon an assumption that the rules of comity underlying 2283 as interpreted by the Supreme Court preclude equitable relief against criminal proceedings in state courts, relying upon Douglas v. City of Jeannette, 319 U.S. 157. Thus the majority of the Circuit only a year before Dombrowski wrote in explaining its conclusion about 2283, "In every case before

the Supreme Court in which federal interference with state court proceedings has been premised upon asserted denials of civil rights, the Supreme Court has required or sanctioned federal forbearance." Dombrowski of course requires a wholly different approach. We venture to suggest that in light of Dombrowski the dissenting opinions of Chief Judge Sobeloff and Circuit Judge Bell that "there is every reason to hold that the equitable remedy expressly authorized in 42 U.S.C. 1983 is within the exception set forth in 42 U.S.C.A. 2283" appear to be sounder.

CONCLUSION

Plaintiffs respectfully suggest that the response to the per curiam remand must be that equitable relief is proper in light of the criteria set forth in Dombrowski and that 28 U.S.C. 2283 does not bar a federal injunction in this case.

Accordingly plaintiffs urge that equitable relief restraining the enforcement of Mississippi House Bill 546 be ordered by the Court.

Respectfully submitted,

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Appendix A

HOUSE BILL NO. 546

AN ACT TO PROHIBIT THE UNLAWFUL PICKETING OF STATE BUILDINGS, COURTHOUSES, PUBLIC STREETS, AND SIDEWALKS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. It shall be unlawful for any person, singly or in concert with others, to engage in picketing or mass demonstrations in such a manner as to obstruct or [unreasonably] interfere with free ingress or egress to and from any public premises, State property, county or municipal courthouses, city halls, office buildings, jails, or other public buildings or property owned by the State of Mississippi or any county or municipal government located therein or with the transaction of public business or administration of justice therein or thereon conducted or so as to obstruct or [unreasonably] interfere with free use of public streets, sidewalks or other public ways adjacent or contiguous thereto.

SECTION 2. Any person guilty of violating this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than Five Hundred Dollars ($500.00), or imprisoned in jail not more than six (6) months, or both such fine and imprisonment.

SECTION 3. This act shall take effect and be in force from and after its passage.

NOTE: The word "unreasonably" in brackets in the text were added by amendment to the Statute on July 9th, 1964.

Appendix B

PRESENT STATUS OF CRIMINAL PROCEEDINGS UNDER MISSISSIPPI STATUTE, HOUSE BILL No. 546

All pending criminal proceedings have been removed to the Federal Courts pursuant to Title 28 U.S.C. 1443.

1. Carmichael v. City of Greenwood, No. 22289, Court of Appeals.

98 prosecutions under House Bill 546. All cases removed to the Federal District Court shortly after the dismissal of the complaint in Cameron v. Johnson. Order of remand was entered without hearing. Notice of appeal was filed on August 28, 1964. The Court of Appeals entered an order staying the remand orders in the companion cases of Anderson and Hartfield and a similar order was entered in Carmichael.

On September 30, 1965, a per curiam order was entered by the Court (Circuit Judges Rives, Brown and Wisdom) vacating and reversing the order of remand and returning the cause to the District Court "for further consistant proceedings including such factual hearings as may be appropriate with respect to both procedural and substantive matters."

The Court of Appeals further ordered "that in order to avoid any conflict between the United States District Court and the Courts of Mississippi and the respective officers thereof with respect to the arrest or confinement of any one or more or all of appellants-petitioners, the stay provisions of Paragraphs (5), (6), (7) and continued in effect until such time as the District Judge on the remand herein ordered enters further orders after due notice with respect thereto."

Counsel has been informed that this order of reversal has been stayed by the Circuit pending final disposition by the Supreme Court of the pending petition for writ of certiorari in Peacock v. City of Greenwood, No. 21655, June 22, 1965.

2. Hartfield et al. v. State of Mississippi, No. 21811, Court of Appeals.

Anderson et al. v. State of Mississippi, No. 21813, 5th Circuit.

72 prosecutions under House Bill 546. All cases removed to the Federal District Court shortly after the dismissal of the complaint in Cameron v. Johnson. Orders of remand were entered without hearing. Notice of Appeal was filed. On August 28, 1964, the Court of Appeals entered an order staying the remand order. The appeals have been duly docketed and filed and suggestions for summary reversal pursuant to Carmichael have been filed with the Court. The cases have been set for argument before the Circuit December 8th, 1965.

3. Miller v. State of Mississippi, 22741, Court of Appeals.

4 prosecutions under House Bill 546. All cases removed to Federal District Court. Remanded without hearing. Appeal filed to Court of Appeals, and remand stayed. Appeal docketed and awaiting argument.

4. Allen et al. v. Mississippi, No. 22741, Court of Appeals.

86 prosecutions under House Bill 546 in Pike County, Mississippi. All cases removed to Federal District Court. Remanded by District Court without hearing. Stay of remand issued by Court of Appeals. Cases presently pending appeal before the 5th Circuit.

CERTIFICATE OF SERVICE

This is to certify that I have mailed a copy of this Memorandum this day, November 26, 1965, by United States mail to the Honorable Will S. Wells, Assistant Attorney General of the State of Mississippi, New Capitol Building, Jackson, Mississippi.

Arthur Kinoy

One of the Attorneys for Plaintiffs.